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Northern California U.S. District Court Series

Albert C. Wollenberg, Sr.

TO DO THE JOB WELL: A LIFE IN LEGISLATIVE,
JUDICIAL, AND COMMUNITY SERVICE

Interviews Conducted by
Amelia R. Fry, James R. Leiby,
and Sarah L. Sharp
1970-73, 1980

Sponsored by the Historical Society of the
U.S. District Court for the Northern District of California

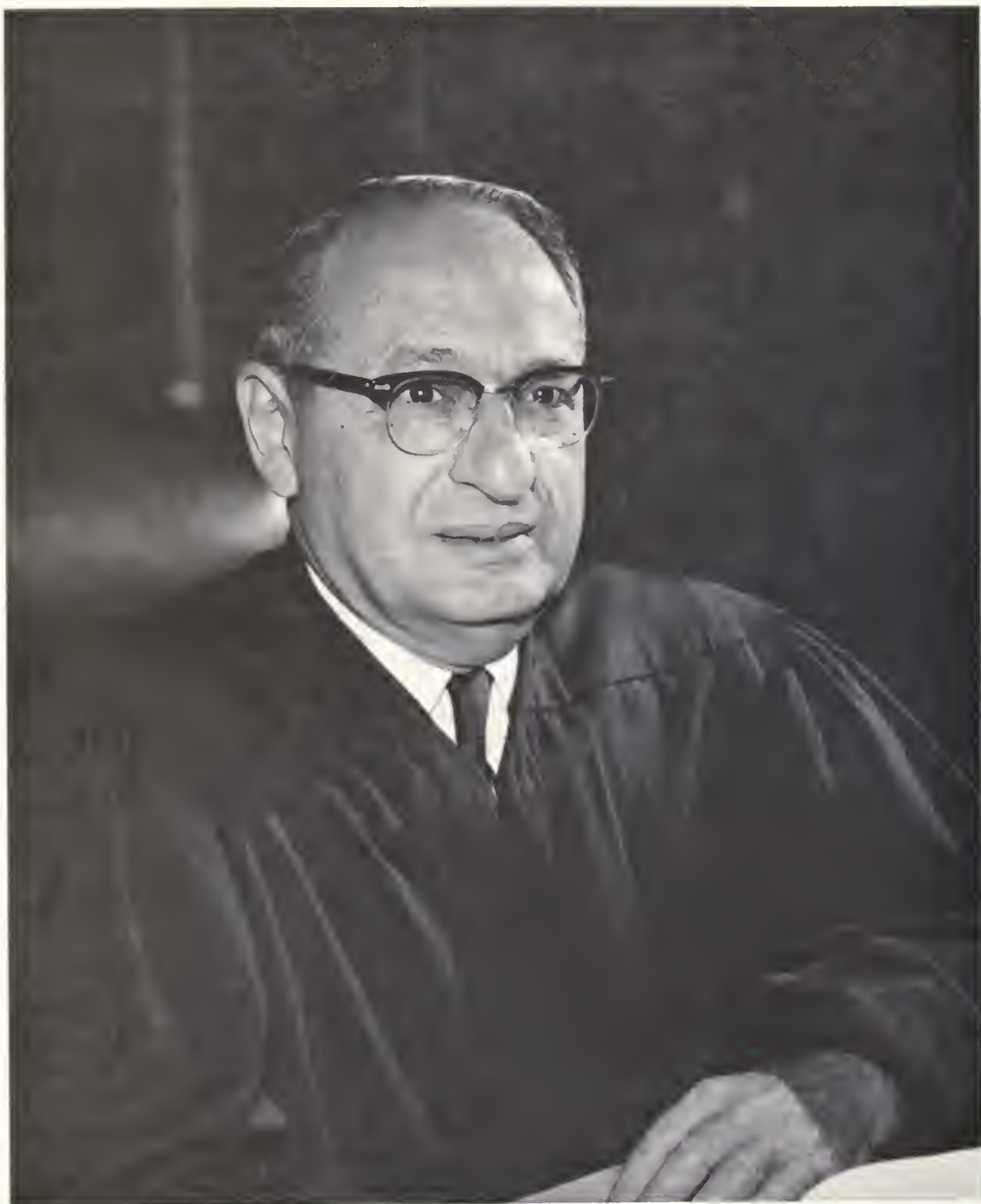
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Judge Albert C. Wollenberg

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ACKNOWLEDGEMENT

In setting out to develop broader awareness and understanding of the work of the federal courts, the Historical Society of the U.S. District Court for the Northern District of California chose well in selecting Albert C. Wollenberg, Sr., as one of the first persons to be asked to tape record an account of their personal experience in issues about which the courts and the community have been deeply concerned. Like other distinguished jurists, Judge Wollenberg brought with him to the federal bench a profound knowledge of his city and state, in this case gained through years as a state legislator, an assistant U.S. Attorney, and as a leader in religious and civic organizations. For many scholars, acquaintance with such personal background is essential for thoughtful appraisal of the role of individuals in the development of significant social institutions.

Some years prior to the establishment of this oral history series by the Historical Society, the Regional Oral History Office had an opportunity to conduct several interviews with Judge Wollenberg on his work as a California assemblyman and the influence of his father, Charles M. Wollenberg, on state social welfare policy. These interviews were recorded in connection with the Earl Warren Era Oral History Project, which was sponsored by the National Endowment for the Humanities, the Friends of The Bancroft Library, the California legislature, and diverse private gifts.

Knowing that Wollenberg continued to have a wise and compassionate role in interpreting critical issues as a judge of the Northern District Court, this initial interviewing was kept open with the hope that further documentation of his career would be possible. This hope was realized when planning for the present series began and the Historical Society decided that an oral history with Judge Wollenberg was among their first priorities. Thus it is with special gratitude that the Regional Oral History Office expresses its thanks to the Historical Society for making possible this full biography of a most humane and honored man.

Preface

The Historical Society of the United States District Court for the Northern District of California is a non-profit organization established by federal practitioners and judges and is dedicated to preserve and develop the history of this court. The Society's goals are threefold: 1) to marshal the sources for historical study of the District; 2) to initiate and encourage comprehensive and scholarly study of the court; and 3) to develop interpretive programs and exhibits making the fruits of this research accessible and meaningful to the legal community and the general public.

In 1980 this series of oral histories conducted by The Bancroft Library was initiated as an important effort in the furtherance of the Society's objectives. By preserving the personal reminiscences of individuals whose experiences and memory can yield valuable "oral evidence" of the court's history, the Society hopes to enhance and amplify the written record.

In addition to historical study of the District, the Society hopes to promote greater public understanding and appreciation of the role of the federal judiciary. Except for those involved in the legal process, the operation, significance, and impact of federal trial courts remains largely a mystery to most Americans. By focusing on the history and activities of the Northern District, the Society hopes to bridge this gap between the legal and lay world and even encourage other District courts to initiate similar efforts. As the nation nears the 200th anniversary of the ratification of the United States Constitution, it is an appropriate time to raise the level of public understanding by placing the contemporary role of district courts in historical perspective.

Thanks are due to the foresight and generosity of the individuals and organizations whose support make this work possible.

Robert Peckham,
Historical Society of the
U.S. District Court,
Northern District of California

San Francisco, California
April, 1981

NORTHERN CALIFORNIA U.S. DISTRICT COURT SERIES

Interviews Completed and In Process, 1981

Harris, George B., *Memories of San Francisco Legal Practice and State and Federal Courts, 1920s-1960s*

Phleger, Herman, *Observations on the U.S. District Court for the Northern District of California, 1900-1940*

Wollenberg, Albert C., Sr., *To Do the Job Well: A Life in Legislative, Judicial, and Community Service*

INTERVIEW HISTORY

Six interviews were recorded with Albert Wollenberg, Sr., as part of the Earl Warren Oral History Project. Three were recorded in 1970 and three in 1973. There were many reasons why former legislators and Earl Warren himself felt that Albert C. Wollenberg needed to be interviewed on his own career as well as about his father, Charles M. Wollenberg. Although Judge Wollenberg denied that there ever was such a person as "Earl Warren's floor man" in the legislature, the fact remains that Wollenberg was in a leadership role for most of the important legislation that Earl Warren attempted. This included the anti-loan shark measure (while Warren was still attorney general, and which bears Wollenberg's name), the prison reorganization act (1944), the bill to finance a postwar highway system (1944), and the controversial health insurance act of 1945--Earl Warren's AB800.

These interviews may help to clear up ambiguities about Wollenberg's role during his nine years in the California assembly, years which ended in 1947, when Earl Warren appointed him to the superior court bench in San Francisco. The savvy Sacramento Bee reporter, Herbert L. Phillips, looking toward the 1945 session, wrote on December 11, 1944, that this Progressive-type Republican head of the Ways and Means Committee "is expected to be Governor Earl Warren's lower house floor leader on budget and other fiscal affairs when the legislature convenes next month." Wollenberg had been in Sacramento in advance for "discussions of state financial problems with administration budgeteers and others." Phillips credits Wollenberg with steering the previous Earl Warren budget "through to final enactment and frequently represented administration ideas on other financial matters during assembly debate." The reporter concedes that in the past the administration "has inclined to refrain from formal designation of floor spokesman...[but] Wollenberg has been accounted about as close to the administration as any member of either legislative house" since Warren took office.

The 1945 sessions were fertile (because of release of funds hoarded for emergencies), productive (many measures for both reform and for conversion to peacetime economy), and wild. The reader may want to look up Phillips' summary of that session in the June 18, 1945, Bee to understand the larger context. Warren and Wollenberg lost at least one important one, the Fair Employment Practices Act; they had to compromise and postpone action for health insurance, but won the big battle of the freeways against (inexplicably) the oil companies (In spite of making enemies of the medical fraternity and the oilmen, Warren won re-election next year because his opponent was even less desirable by their standards.)

In 1947 Wollenberg decided to run for Speaker of the assembly, and did--briefly. The Speaker protem, C. Don Field, was also running, but it was the candidacy of pro-gambling Sam Collins of Orange County (who underwent an inquiry at hearing in April and was eventually indicted but acquitted after trial) that

gave both Wollenberg and Warren pause. By removing himself from the race, Wollenberg threw his support to C. Don Field and thereby held off Collins from the office.

Nor were Wollenberg's contributions limited to the Republican side of the aisle. An interview with Judge William Sweigert, a Democrat, which is still in process, illustrates that party was not important. His first term was in the days of a Democrat-Republican coalition of solons which usually wound up fighting Democratic Governor Culbert Olson. Particularly crucial is the role Wollenberg played in the scene at John R. Richards's bed, when the statement taken from him at that time was a major factor which led to investigations of and end of Olson's much-criticized State Relief Administration. Wollenberg teamed with Gardiner Johnson to write a bill for a replacement of social welfare needs and the SRA, which by then were in quite a crunch because the 1941 legislature had adjourned without voting it funds and the counties had had to take over those functions in the interim.

By the time I met Judge Wollenberg in 1970, he was on the federal bench. And he was busy. One of the recording sessions was held in his chambers around midnight on January 27, 1970, after we had sat through a grueling trial in which the jury appeared hung and the defense had asked that the entire transcript be read aloud. But there were culinary rewards. The Wollenbergs were well-known for a fabulous board, and it was great good fortune that James Leiby and myself were invited to their beautiful house in San Francisco so that we could have dinner while awaiting the pleasure of the jury. The student house-boy and Mrs. Wollenberg produced three perfect courses with wines to match. Professor Leiby was co-interviewer that evening because the topic for discussion was the judge's father, Charles Wollenberg--a key figure in California social welfare on which Leiby was then writing a book.

The judge was soft-spoken and humble. He worked hard to provide time for the interview, and he labored to record the memory of those days as accurately as possible. The objectivity for which he was noted as a judge (by the Judicial Evaluation Survey of the San Francisco Bar Association) comes out in the interview also.

He arranged lunches at the court so that a number of other legislators-become-judges could provide informal discussions of context and background for the Warren years; he worked through the intricacies of trial schedules so that he and Judge Sweigert could be taped together; dug into his own files for relevant papers to back up the interviews. When he reviewed the transcript, he changed very little and left it almost in verbatim condition, so that it is quite conversational.

In his chambers hung a portrait of his father that shows remarkable resemblance to Theodore Roosevelt. In fact, in Wollenberg's study, there is

also a photograph of his father with Roosevelt. As one enters the reception room, however, the first picture one sees is that of his colleague in state government and in the federal court system, his old friend Chief Justice Earl Warren. This transcript seeks to recapture the essence of that friendship.

Amelia R. Fry
Interviewer-Editor

15 June 1981
Washington, D.C.

INTRODUCTORY NOTE ON PUBLIC WELFARE IN CALIFORNIA

Readers of the interviews about Charles Wollenberg may benefit from a brief statement about the organization of public welfare in his time. In 1908, when he became the executive of Laguna Honda, it was customary to divide organized relief and service into "public" and "private" and "indoor" and "outdoor." Public meant tax-supported, by local property taxes; private meant supported by voluntary contributions. "Indoor" meant in an institution, "outdoor" meant in the home. In rural areas, organized relief was mostly public, administered by the county supervisors, who might give a little home relief or might send a needy person to the "county hospital." (These institutions were known in other states as almshouses or poor farms, but in fact many of their residents had chronic medical disabilities.) San Francisco was a big, rich, generous town, with a large number of sectarian and non-sectarian private agencies for both indoor and outdoor relief (indoor relief included orphanages, hospitals, and homes for the aged). Laguna Honda was a special public poorhouse, alongside the county hospital. The county-city had no public relief department for outdoor relief then or until the Depression; it sent paupers to private agencies for that kind of help.

As the Depression fell, the increasing caseload for unemployed was an unprecedented emergency for the county, and by 1933 it was getting help from the state and federal governments. The state had a Department of Social Welfare (organized 1925) which already shared the cost of certain outdoor relief programs: widows' pensions (1913) and aid to the aged and blind (1929); it also supervised certain service programs in child welfare and probation. At first, authorities expected that it would administer relief to the Depression-made unemployed, but as it turned out, California, like many states, created a dual welfare administration. The State Department of Social Welfare channeled state funds to help county welfare departments relieve people supposed to be out of the labor market--widows with children, aged, and blind. After 1935 it also became a channel for federal grants for these categories of needy people. Alongside the state department, in the years 1933-1941, was a State Relief Administration, which was a channel for state and federal funds to support the unemployed, and which tried to provide "work relief"--public works employment--for its clients.

So during the later years of Charles Wollenberg's career the great questions about welfare administration were: What should be the relation between the State Department of Social Welfare and the county departments that actually handed out the help? What should its relations be with the State Relief Administration, and more generally, how should its programs relate to people in the labor market and their families? Since county public welfare got funds from local taxpayers and also the state and federal government, and since the federal and state government wanted some supervisory control over local administration, what was the proper relation between the three levels of government? Charles Wollenberg was able to look at these questions from the viewpoint of a county welfare director who had grown up with the system, and of a head of the state department, under his old friend Governor Earl Warren.

For a fuller discussion of these developments, see the articles by James Leiby, "State Welfare Administration in California, 1879-1929," Pacific Historical Review, 41 (2): 169-187, May 1972; and "State Welfare Administration in California, 1930-1945," Southern California Quarterly, 55 (3): 303-318, Fall 1973.

Professor James R. W. Leiby
Department of Social Welfare

July 1980
University of California
Berkeley, California

I CHARLES M. WOLLENBERG: SOCIAL SERVICE ADMINISTRATOR FROM 1906
TO 1948

[Interview 1: 27 January 1970]
[begin tape 1, side 1]

Welfare Work in San Francisco, 1906-1943

Earthquake Relief, 1906

Leiby:

I have five or six topics here. Let me just run over the topics first and then you'll see the broad outline. First of all, I'm going to ask you something about the personal influences on your father [Charles M. Wollenberg], something about the way he looked upon his situation in the welfare enterprise in the 1920s and '30s, and about his appointment and his work in the State Department of Social Welfare. Then I'm going to ask you some things about the legislature and its role in the formulation of policy as regards welfare; I have quite a bit on that. And then I have some other, more reflective questions.

With regard to influences on your father, would you recall some people whom he mentioned as being influential?

Wollenberg: He started back in 1906 with the earthquake. He was a pharmacist. He called himself a chemist in those days, because you know pharmacists mixed drugs, they just didn't count pills. He was a graduate of the University of California.

He started back in those days in earthquake relief immediately after the fire. He gained a great deal of experience in locating the camps; he was first chief civilian aide to the military governor, General Funston of San Francisco, because we were under martial law. And he accumulated supplies and things of this kind, and distributed them. He set up distribution stations and camps and housing for the displaced people of San Francisco.

Wollenberg: Those who were able bodied and able to, soon got back to work. It was just a temporary relief period--a very short temporary relief period, considering the great disaster to the city, because it was only a matter of a few months and they were back. There was, of course, a residual group: the aged, infirm, who couldn't return to normal life.

He was also, immediately after the army went out, the director of Red Cross activity and--through Rudolph Spreckels, who was chairman of the earthquake relief committee--the administrator of funds from all over the nation that were collected for relief. These included funds--I can't tell you amounts now, of course--allocated by the federal government through Theodore Roosevelt. He administered that, as well.

From that, when there was a change in city administration, and Mayor Taylor [Dr. Edward Robeson Taylor] became mayor of San Francisco [1907], my father was appointed superintendent of what then was called the Almshouse [1908]. He undertook relief work for the aged, and he devised work systems, and was always considerate, I think, of the dignity of the old people themselves. This is his beginning in this type of work. This was as part of the city of San Francisco.

Leiby: So he really got into this without any prior preparation, then?

Wollenberg: None at all, no prior preparation.

Leiby: And he did not look upon this as a vocation?

Wollenberg: No. Until much later, when he was expected to go back into the drug business; Mayor Taylor is the person who persuaded him to stay as head of the city relief organizations.

Leiby: He had done a good deal of administrative work in this relief?

Wollenberg: Oh, yes. He'd had much of it.

Leiby: And he'd made quite an impression on people at that time?

Wollenberg: He did. He did. And he had the confidence of people, both downtown business and chamber of commerce people, as well as union labor, and religious organizations, who were at that time the strong organizations.

Leiby: He was then about twenty-eight years old, was he not?

- Wollenberg: I think he was a little older than that. In 1906 he was--let's see, I think he was born in 1874. His high-schooling was in Prescott, Arizona. He was born in Castroville, outside Monterey. The family moved when he was three or four years old to Prescott, Arizona. When he graduated from high school he came here to the University at Berkeley, from Prescott.
- Leiby: Then his first work in the welfare field, as a sort of vocation, was institutional management, and he was in institutional management up until his work in relief?
- Wollenberg: Yes. This is correct.
- Leiby: Now, to whom did he look up? He found out then that there were other people in the field of institutional management, and there were different theories held by these people. Did he ever mention anybody that he learned anything from, or did he learn most of it by himself?
- Wollenberg: I think he learned most of it by himself. There was no real institutional management here. We had just gone through the graft prosecutions, and Mayor Eugene Schmitz--his brother Frank Schmitz had been the institutional manager out here--and there wasn't much confidence in anything that my father inherited in the system in the city at that time.
- Leiby: Were there any books on charity organization that he read?
- Wollenberg: Oh gee! I can't tell you this. He talked with people in social welfare generally. Who was the famous woman from Chicago in Hull House? Jane Addams. I don't think any management end of it at all came through that. But he had an appreciation of the human end of things; call it the feeling-your-own-way science of social welfare. I think this is right.
- Leiby: What sort of magazines, journals, did he read? Do you remember? Did he read The Survey?
- Wollenberg: Yes. I remember that around the house. I can't tell you how far back The Survey was there. And the professional journals in the field: I don't know when it started, but I think American Hospitals had been published for a long time.
- Leiby: Nineteen-nineteen.
- Wollenberg: Oh, well, 1919 that started. He was president at one time, I believe, of the American Hospital Association. When they met here in San Francisco--that's around 1919 or so. This is when

Wollenberg: he had taken over the management of the city and county hospital, and he made a trip all through the East, studying institutions, when they designed the old hospital here. He worked with the architects.

Leiby: He went east?

Wollenberg: He spent a few months around the country visiting hospitals, as well as homes. Whenever he traveled, he visited this type of institution, or what was being done by way of any other form of care of infirm or aged people. He was quite interested in the care of aged people. 1

Leiby: And he continued to hold that job steadily until--

Wollenberg: Until his retirement, compulsory retirement under the charter, at age sixty-five, I guess it is. It was a civil service job.

Superintendent, Laguna Honda Home, 1908; Superintendent, San Francisco Hospital, 1910-1915

Leiby: Then later on he became the head of the general institutions of San Francisco?

Wollenberg: Well, even before that. Yes, he did. He took over the management of the general institutions. He took over the hospitals. He was sort of, you might say, the right-hand man to the health director, Dr. William Hassler. San Francisco had a very peculiar setup (it still has) for its institutions of this type in that they're under the health department. They're under the director of public health here in this city, Dr. [Ellis] Sox at present.

[end tape 1, side 1; begin tape 1, side 2]

Wollenberg: And Hyman Kaplan, who came here--I can't tell you exactly when he came to San Francisco, seems to me they brought him out from the East, from New York, as a young man. He and my father were always good friends. They were rather close, both, socially and--

Leiby: Your father respected his advice?

Wollenberg: Oh, yes! Very much so. He was one of the early truly professional people here. Was Columbia the big school at that time?

Leiby: Yes. New York School it was called.

- Wollenberg: New York School at Columbia. He came from that setup. Oh, they used to fight like the devil about some things. But they were always good friends, and I'm sure respected each other. Both used things that they received from the other.
- Leiby: Who else did he find useful in his work, in advising him and helping him?
- Wollenberg: Well, all of the private charity people here that he was close with--Kitty Felton, he had contact with her. Again, he had the faculty of fighting like the devil with people--
- Leiby: Actually, I got the impression that she got more help from him than he--
- Wollenberg: Well, she did. But he got a lot of help in the founding of the Associated Charities. I know that he had an acquaintance with Miss Cameron in Chinatown, but to what extent she was able--whether he got anything from her or not I don't know. There weren't too many around; the school [School of Social Welfare] at the university was just in its beginning and formative period. I don't know who we'd say was over there: Barbara Armstrong--she was Barbara Nachtrieb then, I guess.
- Leiby: Jessica Peixotto was the doyenne of the School of Social Welfare.
- Wollenberg: Jessica Peixotto! Certainly! Was the founder. That's right. And others. And I know that he was in contact with her a good deal. He mentioned, somewhere along the line, his time that he spent with--what's her name?--who was president of Mills College, Aurelia Henry Reinhardt. I don't know that she had any experience in this, but he spent time with her.
- Leiby: He was in charge of one of the major spending departments in San Francisco?
- Wollenberg: Right. He always was.
- Leiby: He buys supplies; he hires staff; this means he's subject to a great deal of political pressure.
- Wollenberg: That's correct.
- Leiby: Did he talk very much about that?
- Wollenberg: Oh, yes. He was fighting political pressure all the time. He went through the administration of P.H. McCarthy, who was a labor mayor, who took out after him and tried to force him out of office. And he fought him and kept the support of the newspapers.

- Leiby: Was he directly responsible to these people, or did he have a board over him?
- Wollenberg: Well, there's this change. And if you look in Lawrence Arnstein's book--his interview--he talks about the organization of the health department and the board. He became a member of it. And there were some charter changes at one time. But the board was a strong board at the time, subject entirely to appointment of the mayor, and quite a political board.
- Leiby: So it did not protect him?
- Wollenberg: Not until later, when you had a mayor who appointed men like Lawrence Arnstein, and then it did protect him. But not during the McCarthy administration. He fought the board all the time. The method he used was to go to the newspapers. Long ago, with people of the type of Rudolph Spreckels, Fremont Older (who was editor then, I guess, of the Morning Call, later the Evening Bulletin) and men of that caliber.
- Leiby: In other words his weapon against these people was his own reputation as an administrator?
- Wollenberg: And the belief that everything should be right out. Let the public know the whole story and let 'em know it fast. The bright spotlight of keeping the public abreast of what's going on was the best thing an administrator had.
- Leiby: He had quite a job in public relations, then, as well as his technical, administrative job.
- Wollenberg: Yes, that's right.
- Leiby: And in order to protect his technical administration from undue political interference he had to--
- Wollenberg: Yes.
- Leiby: And he did this himself. He didn't rely on the board, very much.
- Wollenberg: That's correct. For instance, the archbishop was always very close to him. In fact, this is how he became--I think it's in the documents I gave you, the little story of how he took over and became the head of the city department and didn't go back to the drug business. It was through the influence of Archbishop Reardon--I believe he was the archbishop here at that time, and later Archbishop Hanna--these people were always his staunchest supporters.

- Leiby: So strong support came from the private charities?
- Wollenberg: This is correct. And he had the same sort of support from the Protestant churches.
- Leiby: And behind the private charities and the organized religions were a lot of wealthy people to support them?
- Wollenberg: Correct.
- Leiby: So he had a certain amount of support that he could use against crass politics.
- Wollenberg: Right. Right. For example, when the archbishop, through a rich man who wanted to establish a single man's place--old St. Patrick's shelter on Mission Street--there's a lovely brick building there next to St. Patrick's church. He set that all up, and the mechanics of it, for the archbishop.

St. Mary's Hospital was getting into financial trouble, nothing but trouble. The archbishop sent for him and asked him would he go in and reorganize the hospital; then he sent for the mother superior there and said, "Look, you've got to take Wollenberg. He's going to give you orders now."

I mean he did all these things as extracurricular things. He was not compensated for them. And then many other organizations and groups--

- Leiby: Yes. My point is that his function was really as much to--
- Wollenberg: It was administrative.
- Leiby: It's really public relations, too. And in order to be a good administrator, he simply has to have the support of this community. But once he gets that support, it's real support, and the politicians are afraid of him.
- Wollenberg: That's right. This is it.
- Leiby: They'd like to do something, but they're afraid because Reardon is a very important man. You wouldn't want to cross Reardon.
- Wollenberg: This is right.
- Leiby: In Jewish charities, you wouldn't want to cross Kaplan.
- Wollenberg: No. Well, this of course is much before. When we mention Reardon, that's years and years before Kaplan came.

- Leiby: I thought Kaplan was here before 1920.
- Wollenberg: I don't think during Reardon's time. He may have been--well, I wouldn't be too sure. My feeling is that he came after.
- Leiby: Do you remember his talking about the state Board of Charities and Corrections? Did he have very much to do with them?
- Wollenberg: I don't think he had a great deal to do with them. I think in this county he ran San Francisco's charities, its public institutions,* and did it pretty much on his own.
- Leiby: In the 1920s, and before, there's a woman named Amy Braden. Did he ever say anything about Amy?
- Wollenberg: No, not that I know of. I can't tell you, other than that they were friends. Amy Braden and he knew each other well. You see there were very few men in the picture. You notice we are just able to pick women's names in this thing.
- Leiby: There was a woman named Anna L. Saylor. Anna Saylor succeeded Amy Braden.
- Wollenberg: As state director of Social Welfare.**
- Leiby: She was a Progressive. She was [Governor Clement C.] Young's appointee.
- Wollenberg: Young's appointee. Well, then, I would say that when Young was governor my father was friendly with the state administration, because I know he was on good terms with Governor Young, as far as that goes, yes.

*Director of Institutions, City and County of San Francisco, 1932-1943.

**Mrs. Braden's exact title was executive secretary of the State Department of Public Welfare. (In 1927 the name was changed to State Department of Social Welfare.) See Braden, Amy Steinhart, Amy Steinhart Braden: Child Welfare and Community Service, an oral history interview by Edna Tartaul Daniel, Regional Cultural History Project, General Library, University of California, Berkeley, 1965, 263 pp. [In The Bancroft Library]

- Leiby: Governor Young was succeeded by "Sunny Jim" Rolph [James, Jr.]. "Sunny Jim" Rolph had been mayor. Was he an enemy or a friend of your father?
- Wollenberg: They were friends. I don't think Rolph ever crossed my father on anything. When he was mayor, he certainly felt--
- Leiby: He was a much better mayor than he was governor.
- Wollenberg: Yes. Oh, much better. He was in good condition and everything else. And when he was governor, he may have talked to my father about things once or twice or so, but whether he followed them up, I don't know.
- Leiby: Rolph had to make an appointment to the State Department of Social Welfare. He had to make an appointment of an executive director, and he appointed Rheba Splivalo.
- Wollenberg: Splivalo, yes, the Angel of Broadway.
- Leiby: Do you remember your father commenting on that?
- Wollenberg: Oh, yes. He thought of her as not very--you know. I mean he didn't have any--
- Leiby: He did not think this was an appropriate appointment?
- Wollenberg: Not in any sense of the word, no.
- Leiby: Did he ever give you any explanation for why the governor made this appointment?
- Wollenberg: Rolph did all kinds of crazy things. He was not a well man. He may have had some troubles of this and that.
- Leiby: Yes, I know he was a sick man; but this is a peculiar appointment. My thought is that Rolph might very well have appointed your father.
- Wollenberg: I don't know that my father would have accepted it at that time.
- Leiby: Why do you think he might not have?
- Wollenberg: Well, because he was so deeply engaged in the city and the county relief work around here. He was sought after by other administrators who were interested in doing something, who wanted to meet with him, and he was very independent in his job in San Francisco.

Wollenberg: Now Hiram Johnson, I know, offered him at one time the wardenship of either San Quentin or Folsom or both, or something, when Hiram was governor. This is a long, long time ago. Hiram he knew very well. And he refused it; he was not interested in going into penal work. He said, "I'll go over there if they get a warden and he wants me to help organize the kitchen, or something of that kind. That's one thing I can do for you." But he was not interested in running a penal institution.

Leiby: So from his point of view, as late as 1931 it was more of a challenge and more of a reward to be the director of charities in San Francisco than to be director of the State Department of Social Welfare?

Wollenberg: Oh, I think there's no question.

Leiby: No question about it at that time. But even if he had been offered this job, he had a better job. That indicates something.

Wollenberg: I think so. He had a job that suited him better; he was happier than he would have been with the state.

Leiby: How about Governor Merriam and Florence Turner? Did he have any--

Wollenberg: I don't think so.

Leiby: You don't remember any comments he made about the state?

Wollenberg: No. I don't think he had any real, close connection of any kind with Governor Frank Merriam, except through the business office, with what San Francisco had to do. I mean in connection with cooperation in state affairs.

Leiby: In the early days of the 1930s he's very active in emergency relief and that sort of thing.

Wollenberg: Yes, he did a lot of emergency work all through every crisis of any kind. He was active on the state basis too, there; in other words, advising what might be done and what might not be done.

Leiby: Do you remember his ever saying anything about Colonel O.C. Wyman?

Wollenberg: Well, I knew Wyman too, because he was still around in the late thirties and the forties. I know that he had--

Leiby: Respect for Wyman?

Wollenberg: I can't answer this.

Leiby: The reason I ask is that O.C. Wyman for a time looked as though he were going to be the coming man at the state level. He had had experiences in county welfare.

Wollenberg: Yes. He came from Los Angeles, I think.

Leiby: He came from the Valley.

Wollenberg: From Fresno. The Fresno area somewhere.

Leiby: And he was the leader--O.C. Wyman and Sam Thompson were the leaders in the County Welfare Directors Association.

Wollenberg: Well, now that you tie him into the County Welfare Directors Association, these people got along, always, up to a point, with my father. And there was always a place where there was a departure. Yet he would call on them from time to time to do things--now I'm talking about the state organization.

Leiby: We'll come to the state in just a moment. But back in the 1930s, you don't remember his saying anything in particular about who was the coming man in the field? For example, the appointee of Governor Merriam was a Republican political woman, Florence Turner, who was not particularly acquainted with--

Wollenberg: No, I don't think he knew her story at all. I know that he had no connection there at all.

Leiby: Did he know Patty Chickering very well--Martha Chickering?

Wollenberg: I think so. Yes.

Leiby: Had he had much connection with the university? Did he go there to lecture, do you know?

Wollenberg: No, he didn't lecture that I know of. The university people used to come over and talk to him. Somebody did a book, an early book, that mentions him and his organization of San Francisco, his attitude toward self-help.

Leiby: That was a book by Joanna Colcord called Cash Relief.

Wollenberg: No, I think that's the emergency story, working on the roads and things. Isn't there a book on institutional--where they worked in the Laguna Honda home? Or is that part of that?

Leiby: No.

Wollenberg: [Calls his wife] Velma, you were a social welfare major, do you remember the textbook you used that mentioned it?

Mrs. W.: I remember the book, I remember the article, I can see it on the page, but I don't know.

Leiby: Then there was a man named Archie Young, Colonel Archibald Young?

Wollenberg: I just remember the name.

Leiby: It is my understanding that when Martha Chickering was the director of the department, and even before that, Colonel Young was actually very much the policy-maker and actually administrative chief. You don't know anything about that?

Wollenberg: No. I think the person who can help you with this period very well would be Louis Heilbron, because he was associated with Albert Rosenshine.

Director of City and County Institutions, 1908-1943, and
City Unemployment Relief Programs, 1930-1934

Leiby: Perhaps you'd like to say something about your father's work in emergency relief.

Wollenberg: Well, he early handled emergency relief. He has the beginnings of all that in the papers I've given you--some parts of it anyway. He tells the story there of one group that was loaded on a Southern Pacific train, 800-strong, and were shipped out of here to Sacramento, and kept in a stockade in Sacramento for a couple of weeks by virtue of the action of the state setup. He'd been feeding them here, and they were moved out of here in that they marched on the railroad yards voluntarily. But the state had arranged that the SP had a freight train with boxcars open, and they jumped on, and the doors were closed. They were taken and dumped out in Sacramento in a railroad yard where there was a stockade. He tells this story.

[They were] released out of the stockade in groups of six or eight at a time, and they were happy to get out. They'd always be released when a freight train was going through, going east, and the SP people would let them hop the rails--look the other way--and they got them all out of California. He tells that story as having been handled through the state setup, and I don't know whether he fixed the time. [laughter] But he ends up saying, "It had only one effect, and that was to relieve us of a burden."



Charles M. Wollenberg



Albert and Velma Wollenberg
1925

Leiby: You said he knew Harry Hopkins pretty well. Do you remember when he met Harry Hopkins?

Wollenberg: He'd met him at some time, or had an entree to him through someone if it wasn't a direct meeting, when Harry Hopkins had a room in the White House. During the FDR days he actually lived there--it was his home.

As I told you, they allotted the early relief funds. The WPA was one project, and they had some other funds. Whenever a municipality needed help, the way you got your allotment was through Harry Hopkins. And he [Wollenberg] used to tell stories of how, when they needed money, they'd go back maybe once or twice a year or oftener to Washington to get funds for California generally, or for the area.

He'd play poker for a couple of nights all night with Harry Hopkins, back in Washington. A group of them went. He'd take Angelo Rossi, our mayor, back a couple of times for a poker game.

Leiby: Was Rossi a Democrat?

Wollenberg: I can't tell you what Rossi's politics were.

Leiby: Your father was a Republican? A Progressive Republican?

Wollenberg: Yes. He was a Progressive, he was a Theodore Roosevelt-Hiram Johnson Republican--when Hiram Johnson was governor, I mean; not the Hiram Johnson who was elected to the Senate.

Leiby: He had no difficulty with Harry Hopkins along political lines at all?

Wollenberg: Oh, no. They had no problems. They were friends to that extent. He always got funds for San Francisco. I remember he'd always come home with whatever they went back to get.

Leiby: When did he retire from his San Francisco job?

Wollenberg: He retired in approximately 1943, '44, '45--in there. I think it's '43.

State Public Service, 1943-1948

Business Manager, State Department of Public Health

Leiby: That's when he became director of the State Department of Social Welfare.

Wollenberg: Before he became that, he became--he was a friend of [Wilton L.] Halverson's, the health officer [director, Department of Public Health]. And the State Department of Public Health was in a management, administrative-problems jam, it really was, in its setup around the state. It wanted to do more, and it didn't have an organization that could move. It had to back a few political directors.

Halverson, who was a real honest-to-goodness health officer of the highest type, a doctor, came along. My father, after retiring a few months, was asked by Halverson if he'd come into the department as sort of business manager on a temporary basis. And he went into the health department and may have stayed the better part of a year as business manager of the department.

And then he trained a young doctor--can't think of his name, might have been [Malcolm H.] Merrill--who later became health officer [director] after Halverson left. He sort of trained them in business practices, so that they could take it over themselves. His intention was just to get it organized and let the young man come along with him to see what he was doing and how, and what he believed in.

Leiby: When did he meet Earl Warren? I suppose he knew him then.

Wollenberg: Oh, he knew Earl Warren for many, many, many years. I can remember knowing Earl Warren myself ever since I was a very young man.

Leiby: I take it he did not go looking for the job in the state welfare department.

Wollenberg: No, he was quite surprised. As a matter of fact, he met Earl Warren somewhere on the street in Sacramento when he was there in connection with health department business or something. Earl Warren stopped and said, "Charlie, there's going to be some changes in social welfare, and I've got to ask you to help me out. I want you to take it over." I mean it was on that sort of basis.

Wollenberg: My father said, "I've got an obligation to Halverson in the health department. I'm in the middle of something, and I at least want to finish it."

And he says, "Yes, I've heard this. I didn't know it when you went in, but Halverson told me later he'd gotten you to help him out. And I was delighted. Well, how soon do you think you'll get that work done?"

My father said, "I'll let you know. We'll see."

And then a few weeks went by, and Warren called him and said, "We can't wait any longer, we've got to take you," or something of this kind. "We've got to ask you to leave the health department, and I want you to come over."

Director, State Department of Social Welfare, 1943-1948

Leiby: Did the governor have any sort of reorganization in mind at that time?

Wollenberg: No, but they got right busy on it, didn't they? Isn't that the time when Warren--didn't they put a bill in at that legislature? Either a bill was already in, or went in right after, that changed the board so that it reviewed the cases. Or was it a board that had review power prior to that? I don't know what the federal requirement was then. But you see we already had the aid-to-needy federal funds subvention. And that's where the change really came.

Leiby: Did your father ever say anything about what Governor Warren wanted him to do in the department?

Wollenberg: I don't think Governor Warren ever asked him to do anything specific in the department.

Leiby: Just take over the job. But he didn't suggest lines of organization?

Wollenberg: I'm sure he didn't. No.

Leiby: Your father instituted quite a reorganization.

Wollenberg: Yes. He did. But this wasn't Governor Warren's suggestion, except insofar as it may have been the subject of discussion in cabinet meetings with the governor. At that time, after my

- Wollenberg: father became director, he had him come to meetings--I don't know whether they had weekly meetings or whatever they had. Warren called the heads of departments that were under the executive his "cabinet," and those departments met and would frequently discuss plans among themselves, and so on.
- Leiby: Did your father have any idea of how the governor looked upon the Department of Social Welfare? Did he look upon it as very strong or very weak?
- Wollenberg: I don't think that, other than reporting to the governor what they were doing--Sam Thompson was the head over in Alameda County and one of the strong men in the state, eventually. When Earl Warren was district attorney of Alameda County he, Warren, wielded a tremendous effect on the social welfare field. When they would go back and apply for money--I know on one or two occasions going to Washington to appear before the Senate there to get federal funds, Earl Warren would go along with my father, and would consult my father about things concerning Alameda County while he was still district attorney in Alameda County.
- They were very close in Masonic affairs, over a period of time. They were both interested in the Masonic homes.
- So they did have this much of a connection, and he'd consult my father: "What do you think about the county organization?" and "How much could you set up?" And so forth.
- Leiby: For social welfare? That's very interesting.
- Wollenberg: Yes. And I imagine you'll find that when Sam Thompson started as a very young man, he may have pretty much started with ideas gotten from my father. Now, how his philosophies developed, that's another matter entirely.
- That's a different county than we are, as you know very well. Always you've got a very permissive San Francisco, and a not-so-permissive Alameda County--in pretty nearly anything you undertake: welfare, law enforcement, anything else.
- Leiby: Did your father ever say anything about any surprises he had when he went into the department? Did he ever talk to you about anything striking him as unusual or difficult?
- Wollenberg: I don't think so. I think that the person who'd know more about that is Lucile Kennedy.
- Leiby: She was a great admirer of his.

Wollenberg: Yes. And he had a great belief in her ability to get jobs done.

Leiby: Was there anybody on the staff--

Wollenberg: Elizabeth MacLatchie. The two of them I think were very, you know--

Leiby: Actually, his deputy director--

Wollenberg: [C.A.] Herbage?

Leiby: To whom he delegated a great deal. Your father had a theory, as I understand, and perhaps you can confirm this, that he ought to be available to the public, and that he ought to go around the state--

Wollenberg: This is his whole background.

Leiby: --and that he ought to talk to people and ought not to get overly involved with the people in the department.

Wollenberg: This was always his belief. Right.

Leiby: He hired people to do a job and he expected them to do it. Have I got his administrative philosophy correctly?

Wollenberg: This is right. I think you have.

Leiby: So Herbage became the operational head, and your father made all the decisions.

Wartime Involvement

Wollenberg: He liked to undertake things, you see. During the war, for example, there were two or three incidents that the social welfare department got really involved in. They were the things my father loved to do most.

One was after the liberation of the Philippines, when the war prisons were opened up. The navy brought back a couple of solid boatloads of civilians who'd been in prison camps for four and five years--whatever it was from the fall of Manila till its liberation--children, families that had been broken, one member--the husband, maybe--had been killed or died, things of that kind, most of them penniless, most of them without any resource, many of them. They came with the clothes they had on, many of them dressed in just dungarees. That's all some of the women had when they landed.

Wollenberg: The navy department asked my father's social welfare department to undertake the processing and handling, because the Red Cross was too tied up with all of its big war projects, although the Red Cross had some special funds that were allocated. And he had quite a time getting a staff together. Finally, the last minute, after he thought he had a staff here--he'd sent out to all the private agencies to get volunteers, and with the competent people available in the state to take over the actual operations of the thing when it happened--the navy, for some unforeseen reason, rerouted the ships to Long Beach and gave him maybe two or three days notice that the ships were routed to Long Beach.

He called Colonel Will, Art Will, who was director down there, and said, "Art, look, I have to turn to you. What can you do? The ship will be in at such-and-such a time." And he called his entire staff--took them off of all other work, case-work and everything they were doing, put them all in Long Beach to process these people, because it was important they not be left to lay around. It ought to be done in forty-eight or seventy-two hours--I mean they had just a couple of days to get money to them. They had to get them on their way, or something of that kind.

There's a letter somewhere, I think it's in the group of papers you have, where he wrote to the newspapers, my father did, to say that they had reported very well what had happened there, but didn't get the credits right: That the staff of Los Angeles county welfare had worked the first day for exactly nineteen hours on their feet without any rest, had then closed down and come back five hours later, and worked the second day for sixteen hours, until they processed everybody. They had handed out in relief money checks close to a million dollars. Somewhere he's got the whole account as sent back to him by Art Will. And he kept the book on it and all.

In addition, Art Will had written and thanked him for sending this letter to the newspapers on behalf of the staff, but he said, "You overlooked something else. We had about eighty-five or ninety volunteers from the private agencies in the Los Angeles area that we had contacted. And the private agencies had sent their people over too. We didn't do it alone, we had another eighty or ninety private agencies working with us."

A job like that is the kind of job he was just cut out best for; as you point out, he knew where to find somebody in the emergency to step in, and Art Will did too. Now, it may have been the natural place to go, and all that, but they did it without any reluctance. Didn't bother to go to the board of supervisors and say, "May we?" They just went ahead and did it.

Wollenberg: Another thing would be an incident of emergency in feeding people. He was always very happy when he was involved with people. [Interruption, knock on door, conversation about the jury.] You know he was the local director of Red Cross all through the war.

Leiby: Yes, and for many years before that.

Wollenberg: Since the earthquake.

Leiby: He was head of the home service.

Wollenberg: The Red Cross's home service, right along.

Leiby: Which is their most important social-work agency.

Wollenberg: That's right. Yes. And when the emergency general relief organization was set up during the war--that was in the home service department, I guess--he had a lot to do with setting that up here in this area. He became involved in connection with agricultural workers in the period when they were marching. You know they had a "Coxey's Army" deal, I forget what they called it, that came through the state. When they came through here he fed them.

During the strike on the waterfront he had a big fight with Bridges's union, and Bridges's people. The waterfront situation was very serious at the time. They didn't have anything to give the waterfront men that would help them with the strike. They didn't feed strikers, and so forth.

Leiby: Bridges wanted help?

Wollenberg: He wanted help and he couldn't get it. I mean there were lots of reasons he couldn't, but among others there were no funds, and I guess he thought at one time they should have it anyway, but--

Then, as against that, Andrew Furuseth of the old Seamen's Union was a great friend of my father's. They did lots of things together many years back. And then his successor, who was Earl Warren's director of labor, you know who I mean--

Fry: Scharrenberg?

Wollenberg: Right! Paul Scharrenberg, head of the Department of Industrial Relations.

Leiby: Did your father have anybody on the State Board of Social Welfare during his administration that he particularly relied on?

Wollenberg: I think that the board as a whole was--at a later period on the board there was Judge Koenig. Ben Koenig.

Leiby: Ben Koenig was the head of his board.

Wollenberg: Yes. And he and my father were always very close. Ben was always a very active Democrat for party politics.

Leiby: Oh, is that right?

Wollenberg: Sure!

Leiby: Did your father ever talk to you much about appointments to the board?

Wollenberg: No. I didn't-- [Interruption here: jury reported ready.] You ready?

Leiby: Is this a "hung jury?"

Wollenberg: Yes.

[end tape 1, side 2; begin tape 2, side 1]

[Interview 2: 12 February 1970]

Home Life at Laguna Honda Home

School for Albert, Friends Among Inmates

Leiby: I was interested to read over your father's narrative. I was wondering if you might begin by talking about something we didn't talk about last time. Perhaps you would say something about your memories of Laguna Honda. You grew up there?

Wollenberg: That's right. You mean you want to hear about Laguna Honda as such?

Leiby: What was the thing that struck you about it when you were a boy? How old were you when you moved in there?

Wollenberg: When we moved in there I was about seven years old, I guess, but it was about a year after the earthquake. I was born with the century in June of 1900, and we moved in there a year and a half after the 1906 earthquake. So I was in my seventh year, probably, when we moved in there.

Wollenberg: My remembrance as a boy growing up is we really lived in the country. There was nothing around us. We were surrounded completely by forest. And it had been an institution, it'd been the almshouse, and it was known as the Almshouse at that time. Old wooden buildings were standing around that had been constructed from somewhere in the early 1880s, I believe, by the city, in this area west of Twin Peaks. The city owned land west of Twin Peaks down, except the tops of the peaks. And in that area, which the Wells Fargo Express Company owned, they used to pasture horses from the old express wagons that worked around the city; later these became American Express wagons.

Leiby: Do you remember Goode's Dairy?

Wollenberg: Goode's Dairy? Quite well. Mrs. Goode was a Burfine, and her sister Annie Burfine used to work in our house as a great cook. She was about six (or better) feet high, and she had a sealskin jacket that came to around her waist.

She had a good trotting horse and a buggy, and that's the only way you got around in those days. There was no other transportation out there. The nearest streetcar line was about a mile and a half to two miles away, on Lincoln Way, along the side of Golden Gate Park. But Annie used to drive this buggy. Goode's Dairy was on the hill above us, had a big pasture, lots of cows, and Goode Brothers used to sell milk all over San Francisco. It was produced on those hills.

Leiby: Where did you go to school?

Wollenberg: I went to school at Laguna Honda School, which is on Seventh Avenue and Irving. The old building I went to school in is still there. The Laguna Honda Home was a mile and a half or better away, and I used to ride to school on horseback, come down old Seventh Avenue. It's now entirely different than when I started. You wound around through there, and then through the forest, and then around Laguna Honda Lake. The lake there now has a "boulevard," it's called, around the lake.

We used to ride to school, and near the school was an old coal yard, and in that coal yard I used to tie my horse up. My father made arrangements with the fellow who ran the coal yard that I could come in, because he had teams that delivered his coal. I could use the stable there. And then after school I'd get the horse and ride home. And [Mayor] Rolph, whom you mentioned earlier, also had gone to Laguna Honda School.

Leiby: In the literature about nineteenth century almshouses and almshouses around the turn of the century, the picture you get is one of a place that's very depressing, full of sick and dying people. The impression I got from your father's manuscript was nothing at all like that.

Wollenberg: This is right! I don't know what it was prior to his time, because it was run by a man named Frank Schmitz, the brother of Mayor Eugene Schmitz, who was one of those indicted by Hiram Johnson, and I guess he was one of the few people that was indicted with Abe Ruef. Eugene Schmitz did time, I believe, although he was later elected a supervisor after he got out of prison. [laughter] He was convicted. His brother Frank ran the old Almshouse.

Now, my father, after the Taylor administration came in (and he had been a director of the refugee camps for the Red Cross), was appointed superintendent of the almshouse. He succeeded Schmitz.

One of the first things he did was to develop occupations for the inmates and compensation for people who worked. They got paid, although it was modest pay. They were paid for their time and their work. One of the great bonuses that they received was a shot of whiskey, a two-ounce glass or whatever the proper bar-glass size was at the time. They could line up and get whiskey before dinner. That was all done by the institution.

Leiby: A lot of these people needed hospital care, weren't ambulatory--

Wollenberg: Oh, yes. This was only a minor number percentage wise, a small number who were able to work, out of say two thousand people in that institution; that's in round numbers. That's about what the population was, and it stayed pretty static until social security came in. Then those who were able to work didn't have to come to the almshouse. They could supplement [their income] a little bit, or they could take care of themselves on the outside; I'll put it that way.

Leiby: You didn't find this a very depressing atmosphere for a kid.

Wollenberg: Oh, no! It was a delightful atmosphere for a kid.

Leiby: Did you see the wards very much?

Wollenberg: Oh, yes. I wandered through the wards. I had friends--some of my dearest friends were inmates--old sailors and people like that. And my folks never objected to my making buddies out of the people who were interested in making a buddy out of me.

Wollenberg: I remember I raised a few rabbits--I had a rabbit hutch down there. An old man (who'd had a stroke of some kind) and I raised rabbits together. We had sort of a partnership, and eventually we sold rabbits to Letterman Hospital. I can remember taking over rabbits for experimental purposes and getting 75¢ apiece. And I remember we used to sell rabbits to the University of California Hospital for experimental purposes, and he and I were sort of partners in the enterprise. It never produced much money because we had to buy our own rabbit feed, and so on.

Leiby: He [your father] always speaks of men patients. Were there many women patients at Laguna Honda?

Wollenberg: Oh, yes. There were, I'd say--I'm guessing, but I'd say that probably 25 or 30 percent were women patients, although men were the greatest amount. The majority were men.

Leiby: So as many as one in four were women?

Wollenberg: Oh, yes. Sure.

Leiby: Did the place change very much while you were there?

Fire at San Francisco Hospital

Wollenberg: Oh yes, the physical place changed a great deal. They built a concrete building up on the hill after the City and County Hospital, which was also out there for a while, burned down at one time. They had a fire while--

Leiby: Was that before 1914 or after, do you remember? Your father was in charge of that beginning around 1914 or '15.

Wollenberg: It was before; Dr. White, whom he talks about in that paper (does he not mention the name of White?), was superintendent up there at the time. The place was in these old wooden buildings, and they caught fire. I can remember all the employees in the Laguna Honda Home rushing over there and carrying patients out, bringing patients out. And they didn't lose a patient by the fire, of which my father was always very proud, because he had the fire-fighting equipment. He had developed it, and the employees of the Laguna Honda Home acted so beautifully--I mean reacted properly and went into the fire. And the nurses in the hospital--there was a training school for nurses at the time there, and the young students acted so beautifully in carrying patients out.

Wollenberg: They had a great deal of trouble, because it was before there was inspection and standards. They would try to wheel a bed with a bedridden patient out the door, and they couldn't get him out the door. The bed was too big for the door, and things like that. They had to lift them over their shoulders and carry them out. They carried them to a big lawn in the garden, which was down in front of our home where we lived, and they put the patients on this law. They had the whole hospital out on that lawn finally. Several hundred patients right out on the lawn. And they got everybody out.

I can remember--I was a young boy, maybe thirteen or fourteen at the time, or twelve, I don't know--I can remember our butcher, a fellow named Ososke (who could throw, like butchers in those days did, a half a steer over his shoulder and carry it), coming down with a completely naked woman, a colored woman, black. She was tremendous in size, to my thinking, completely bedridden, and Ososke carried her out of this burning building through the flames, down those stairs onto this lawn with her over his shoulder just as if she was a side of beef!

She was panic-stricken, and all he would do--every now and then he would whack her on the behind, this bare behind. He'd slap it and say, "Shut up. Goddamnit, shut up! I'm trying to get you out of here. Quit your yelling so much and kicking!" [laughter] And then dropping her on the lawn and running right back up to get somebody else.

I can remember this, that these people in their rescue work weren't picking one from another; they were taking people out of bed and lugging them out. This fellow was a strong man, he was a true butcher. I mean he was probably used to carrying at least a hundredweight and maybe more over his shoulder, as the old-time butcher did when he took a half a beef into his shop. All of these people were laying out on the lawn.

By the time the fire department came, and this was a while--the first few companies had gotten there pretty early, but they had abandoned the equipment down the hills. The firemen were all straggling in, running on foot, because down on the road the horse-drawn equipment was struggling up the hills to get there, and the men were running ahead on foot. By the time they came, they spent their time fighting the fire because they didn't have to do any rescue work; all the employees and the nurses had turned in such a good, conscientious job of saving people.

Wollenberg: I think they had about two or three deaths, none of which were attributable to the fire as such. They had been brought on by the fire--heart attacks and things like that--heart patients. But no one was burned.

Leiby: So you didn't feel at all deprived, growing up next door to the almshouse?

Wollenberg: Oh, no! This was great.

Leiby: Sort of a country estate with lots of interesting cronies around?

Wollenberg: Absolutely.

Leiby: And you wandered through those wards of sick people who were going to die--

Wollenberg: Sure, that's right.

Leiby: No sense of doom--?

Wollenberg: No sense of doom.

Leiby: And your father was never bothered by the responsibility of taking care of these cases?

Wollenberg: Never bothered, but he always had the feeling of the obligation that was involved, very deeply.

Leiby: It was a tough and interesting administrative job, and he was helping people.

Wollenberg: That's right.

Leiby: My mother was the supervisor of nurses at the Philadelphia almshouse, and her stories about that place were much more sad. There was a whole ward of foundling children in this little hospital, and one of the saddest stories I've ever heard was how she would stop by one of the cribs of one of these infant foundling children, and she found out if you tickled their cheeks, and smiled at them, those children did not die so soon. They lasted a few weeks longer if you tickled their cheeks and smiled at them. She's full of sad stories like that, but I don't get any sense at all of that in your father's account.

Attitude Toward Alcoholic and Senile Patients

Wollenberg: Oh, no. He had an administrative job, and he used to--I think in a way it was really the humane thing to do--I think you've noticed in his document he speaks a great deal about how liquor had a hell of a lot to do [with the circumstances of the inmates], and yet he was not a prohibitionist any more than I am as you've inevitably observed in here. [laughter] He had the same kind of household.

There was a "blind pig," and I mean a real blind pig, an unlicensed premises that lived primarily from the old fellows on the place. After a payday, they used to--and he knew who they were--sneak up there, go through the forest and get over to this place, and get this rot-gut liquor that was served up there. Or they'd come down to a licensed place on Seventh and Hugo, down below.

We had regular teamsters on the payroll; they had maybe half a dozen dump carts, the old-time dump cart, the kind with one horse where you rode practically on the horse's back, if you've ever seen one. They used to use them on the wharf out here to load coal on the ships. When you pulled a pin, the cart tipped up to dump your load. Frequently, on a Saturday night, if nobody was around, if the teamsters were off, he'd say to me (because he knew I knew how to saddle a horse, or harness a horse and all that, because I used to love to be around stables), "Albert, go down and hitch up the dump cart, will you? And you'd better put old Billy in it." He'd know the horses by name.

"Hook up the dump cart, and when it's hooked up we've got to go up to the blind pig and pick up some old men along the road." Because somebody who'd come in said there were a couple of old men sleeping along Corbett Road, on the side of the road. Somebody had driven by and seen them. Well, we'd take the cart, and we'd go up there and maybe pick up four or five, dead drunk.

There was a chief steward there named Gunston; he'd usually take him along. He was a big, strapping guy. You had to lift these people up and dump them in the cart, and they'd be out, completely--real dead weight, real drunk, stiff. And we'd take them in and then go back down the road to Seventh Avenue, maybe a mile and a half, and go along the road and look for them in the ditches, and all that; walk along till we found them, and maybe pick up four or five more and bring them back. And they'd put them to bed and let them sleep it off over the weekend, or the time that it took to sleep it off.

- Wollenberg: If they got rambunctious and were in a fight or anything like that--stinking drunk so that they were mean--they had a whole row of cells, and they let them sleep it off in the cell and turned them loose in the morning. Or if they were so rambunctious you couldn't handle them, he'd call the police and they'd pick them up, they'd send a patrol wagon. But if they weren't fighting, we always picked them up, and I used to go along. It was good sport to go along! [laughter]
- Fry: Your adventure!
- Wollenberg: That's right.
- Leiby: Did your classmates at school ever tease you about living at the almshouse?
- Wollenberg: No. I think they were all envious; because I used to bring them home from time to time, and they used to see what a great life it was to live in the almshouse.
- Leiby: I've heard, as a matter of fact, from other sources that your father was very proud of his table, and that he entertained a good deal.
- Wollenberg: He did. That's right. They bought supplies, for instance in meat, by the side of beef, and so forth. And he always said, "Why should I have the best cuts of the meat go into stew for fifteen hundred?" The employees and his home, which the county supervisors by resolution gave him, his keep and maintenance, were part of the remuneration for his job. And he used to entertain; he had the right to entertain. Mostly it was entertainment of his good friends; he didn't entertain just to be entertaining for political aggrandizement or things like that.
- He always knew when it was a good time to put on a good party for the grand jury, or something like that; he used to entertain them every year. That was a regular thing that was done, and they could ask questions. They always had a good lunch when the grand jury came out; I suppose they do that today. I can remember when I was in the legislature, any time I visited state institutions as a member of the legislature, they always killed the fattest hog. Of course, when you go to state institutions, you always get ham, because they all have swill to feed, you see, so they can all raise pigs. You always find a pig farm around any big institution.
- Leiby: Did you hire servants separately, or were the servants from the almshouse population?

- Wollenberg: My mother used to pay--yes. There used to be an old lady who worked in the kitchen and helped with the dishes. The city provided Annie Burfine, the cook, whom I told you about, who was a sister of one of the Goodes. Then she had as her help a couple of old ladies who had been hotel maids or something of that kind in their time. I remember old Mary Madison. She was a sweet old lady--lovely woman. Mary Sheean, who worked upstairs in the house, helped. This was a great life for them.
- Leiby: When I was in New Jersey I would occasionally go around and visit the supers of the institutions and they had the servant problem licked. Oh, my!
- Wollenberg: Oh, sure. Well, you go today to any prison and see if the wardens and the assistant wardens haven't got help in their homes. Certainly! These people are there; it would be unfair to them to a large extent if they didn't have the opportunity to do a little work and help.
- Fry: But a lot of people at that time had Chinese cooks.
- Wollenberg: Yes, but there were very few Chinese in the institution. There were Chinese, but they were sort of simple minded, as I remember. These old Chinese were in that so-called "Last Chance" building that I think I told you about when I saw the picture of it. It had been the pesthouse, and then they called it the "Last Chance," and that meant that if they couldn't live in there quietly and without any trouble, they would be committed to a state asylum. It was for the people who were sort of simple minded, and the people who were real senile, but shouldn't be committed.
- Leiby: Who were conceivably threatened by it.
- Wollenberg: Now, my father's idea was, too, that the county, and the counties generally, had no right to just take senile people, which has been quite a practice. For many years when I was the judge of the psychopathic ward here in San Francisco--they call you the psychopathic judge, which is a good name [laughter]--one of the horrible things was when people would bring in an old mother or a parent who couldn't live in the household any more--she was causing trouble between husband and wife, or it was tough on the kid or something of that kind--and they'd put them out there for commitment. This was just a question of taking them off the taxpayers in San Francisco and putting them on the state taxpayers by committing them as insane--you can't commit them any other way.

My father's idea was that this was part of the county responsibility and that these people shouldn't be committed as insane people. They weren't, they were senile they had to

Wollenberg: have care. You couldn't just turn them loose, because they might wander away and not come home.

He had a special building built for them with a big, high fence around it so they couldn't wander away, with more nurses and staff than you had to have in the general population, because you might have to put them to bed at night, and you couldn't depend on them to undress and go to bed. You might have to put them down at a table and see that they ate their meal, have somebody stand over them and say, "Come on, Grandma, eat your meal now. You gotta eat." It took more staff to run this.

After he left out there, it immediately went to the practice of many other counties in the state; there were some 90 percent of the small counties that started [this practice] years before that: they influenced the superior court judge to commit these people to state hospitals as insane, just to take them off the county taxpayers.

Leiby: Just for custodial care?

Wollenberg: That's right. Take them off the county taxpayer and put them on the state. And this was one of the things San Francisco was one of the last counties to do because my father always blocked that. He said, "Regardless of whether these people can live at home they should be near their people, so they can have visitors and they can see their family. And the family now and then can take care of them, let them go home. They ought to live in the community, and it's a community obligation."

Leiby: In New Jersey we had county asylums. They were quite custodial; they'd keep an eye on patients. Sometimes patients recovered, but most of these were senile patients.

Wollenberg: Yes. That's right, aged.

Leiby: And they would be near their friends, and they could go on a visit with their nieces and nephews and so forth.

Fry: It interests me that so many of the Chinese were in that category. Why was there a higher percentage?

Wollenberg: No, no, I didn't mean to say there was. I gave a misimpression if I said that. The Chinese in the institution were in that category because they couldn't be taken care of by their relatives and so forth. There were very few Chinese in the institution. Those that were there were in the senile category, and there may have been only half a dozen at the most.

Fry: So I gather that the Chinese community then to a large part took care of their own?

Wollenberg: --their own people. That's correct.

The Six Companies--that's a whole other story. The story of the Six Companies is fascinating, as far as San Francisco is concerned. Of course it was the capital of the Chinese of North and South America, and they ran it. They had their own courts, they had their own parliament and passed their own rules and everything else, for many, many years. And the Six Companies were no more than the parliament and the court of North and South America. This was, of course, before Communist China, this was old China. And they elected delegates from South America, and they came to San Francisco--now we're on the subject--and they had an unofficial, extraterritorial government here.

So when relief came, and Chinatown found it too hard to take care of its own, because there were too many of them going on relief, my father set up a Chinese committee. A man named T.Y. Chin, who's still around somewhere, set that up under my father. They had their own kitchens and their own thing for Chinese out there under the Six Companies, and the Six Companies ran it.

Fry: Where did they have this? Was it in Chinatown?

Wollenberg: It was always on Stockton Street. The old building is still there. Yes, it's in Chinatown.

Depression Years: Politics and Relief Programs

Leiby: Last time I talked with you, you characterized your father's political views as Hiram Johnson Republican--the early Hiram Johnson.

Wollenberg: Yes. The early Hiram Johnson.

Leiby: How did he feel about the election in 1932? Was he an admirer of Herbert Hoover?

- Wollenberg: Oh, to be frank, I don't think my father ever voted for Franklin D. Roosevelt, so I guess he must have voted for Herbert Hoover, but he knew Herbert Hoover. I don't know that he was an admirer of his policies as far as domestic policy was concerned, but he wasn't ready for the New Deal, as such.
- Leiby: He was not ready for the New Deal?
- Wollenberg: No. I think if you'd had a Republican of the type of Theodore Roosevelt or a Hiram Johnson, as Hiram Johnson had been as governor, around, my father would have been in that camp.
- Leiby: So you think that even in 1932, then, in his own mind he supported Hoover against Roosevelt?
- Wollenberg: Oh, I think so. He'd have told you why. He didn't write Hoover off as a bad man or anything of that kind.
- Leiby: Your father was very interested, among other things, in the development of private welfare?
- Wollenberg: Oh, by the way, I can tell you this: during World War I he was Hoover's food administrator in northern California.
- Leiby: Oh, I read about that, but I never realized that, of course, Hoover ran that--
- Wollenberg: Hoover ran that whole program. My father was food administrator in northern California--I don't know which his territory was, maybe just San Francisco, but he was, and he worked under Hoover.
- Leiby: He also knew Mr. Wilbur of Stanford?
- Wollenberg: Oh, quite well. Dr. Ray Lyman Wilbur, the president.
- Leiby: Your father was one of the founders of the Community Chest in San Francisco?
- Wollenberg: Yes. Oh yes, quite right.
- Leiby: And Hoover was very much interested in the whole private effort.
- Wollenberg: In the Community Chest movement. Yes. That's right.
- Leiby: A voluntary approach to welfare emergencies. So I would have thought he would have been quite favorable to President Hoover who was, by the way, very much supported by social workers. Some social workers in New York supported Roosevelt, but Hoover was a hero to these people because of his Belgian relief record, his general intellect.

Wollenberg: That's right. And he brought around him professional social workers when he did the Belgian relief, and as food administrator during the war, and all of these things.

Leiby: In the early days of the New Deal you will recall they had the Federal Emergency Relief Administration which pumped aid from Washington into state relief administrations, and then in 1935 they got out of this and went into the works program, the Work Projects Administration.

Wollenberg: WPA. Right.

Leiby: Do you remember anything about your father's response? Did he think that the change from federal direct relief under the FERA to federal work relief--did he think this was a good idea?

Wollenberg: He always believed in work relief as against handout. He always believed in it. He had so many estimates; you had to send them in every thirty days: the people you had on relief, unemployed, in San Francisco. One of his favorite stories of the early days of work relief was getting a telegram from Harry Hopkins (I wish I knew where to find that telegram for you)--in the early days of Harry Hopkins--in either late December or early January: "We have allocated X dollars" (whatever it was) "for your relief in San Francisco." (Work relief, this was.) "Put" (we'll say it was ten thousand people, whatever it was; maybe it was six or seven thousand unemployed men)--"Put these men to work immediately shoveling snow off the streets of San Francisco." (Now, New York had had a big storm, and all over the country there was snow relief--shoveling-snow relief.) It was signed Harry Hopkins!

My father read it and couldn't believe it. [laughter] And he sent a telegram back to Harry: "Dear Harry" (he knew him on that basis), "Ship the snow. I will spread it on the streets and immediately put men to shoveling it off. Until you ship snow, cannot do anything under your instructions." They were to be paid for shoveling snow. So he said, "I can't work them. How can I shovel snow?"

And he gave this to the newspapers and the papers carried the story at that time. [laughter] Hopkins ordered him to shovel snow off the streets. "Well," he said, "it isn't too hard, you know, to ship snow. You could get the Southern Pacific to go right up to the snow sheds at Emigrant Gap. That's all they have to do, and I'll send a crew up there to shovel snow into the cars. They can bring it back down here. We'll spread it on the streets, and then we'll shovel it off the streets, if that's what you mean." He never was forgiven for that.

Fry: Kind of a dirty trick to release it. [laughter]

Wollenberg: Well, he said that--

Fry: --he couldn't resist it?

Wollenberg: Well, not only that. He said he had read in the paper, together with the telegram to him about the amount of relief money, they had relief for works in San Francisco, but it was all tied in with shoveling snow. You might as well have said, "Shovel smoke." I mean, it's the same.

Leiby: The general thought, or one of them, behind the New Deal was that we might, in the depression, prime the pump. Those work programs were supposed to stimulate the economy by putting money into it. Did your father ever--?

Wollenberg: Well, these were, of course, different programs that he had anything to do with. These things were relief programs as against "priming the pump."

Leiby: I was wondering what he thought of the programs. Your father was a specialist at relief. Now, relief is not simply the alleviation of misery, but it's supposed to have a constructive economic purpose. I wonder if he ever bought that theory. The theory did not work, you know.

Wollenberg: I know. No, I don't think he objected to it as a theory, except the execution of it. They talked "priming the pump," and they thought of priming the pump as just raking leaves. They never had a project, and this was his whole objection; he thought the whole thing might work if they had substantial projects to work it with. For example, he had worked out a whole program, I think, of the CCC camps. (Later they were called that in the docket by Roosevelt.) He had submitted these on the suggestion of--I don't know who but someone--to Hoover, and Hoover had this. And later on they gave Hoover some credit for being interested in the CCC camps.

Leiby: In conservation.

Wollenberg: Yes, in conservation. The young people, get them out of the city, off the streets, get them into the country areas, get them working in the forests, clearing underbrush, and pay them. It was necessary work; it was real conservation work. Not only fire trails, but blight [control] and things like that were starting in those days.

Wollenberg: We later had [a program to control] the rust on pine trees, and all of those things. That underbrush might have all been cut out, and you might not have had these epidemics of these things. That would have been constructive, but it would not have been enough or the type of work that would prime the pump as such.

This is where Roosevelt and the FDR doctrine sort of fell down. It's in line with the story I told you. The facts of things never really meshed together when you started analyzing what he was talking about. It was a lot of ameliorative work--excellent in that respect, as relief. But to call it pump priming, to get the economy started, it never did work. It was, as you point out, a disappointment.

Leiby: Your father, then, supported the approach of Harold Ickes--that if there was to be an economic development program, it should be substantial economic development?

Wollenberg: Well, I never knew much of that. He hated Harold Ickes. He had experience with Harold Ickes, direct experience with Harold Ickes, and he had a--

Leiby: He was a Teddy Roosevelt Republican, you know.

Wollenberg: That's right, but--

Fry: People hated Harold Ickes; even when they were all for his policies, they couldn't stand the man.

Wollenberg: This is correct. My father had a couple of personal experiences with Ickes that gave a distrust of the man, Ickes. This is correct.

Leiby: Can you say something more about this?

Wollenberg: Didn't he write it in there? Did he get that far, about the Standard x ray company. I think so. Well, my father had the obligation of buying new x ray equipment for the city at the time, for the hospitals and so forth. And he inquired of the x ray departments. The head man at the U.C. Hospital, where he inquired, the Stanford x ray people--whoever was head of it--and others, generally said, "It doesn't make much difference. There are features in Westinghouse, and there are features in General Electric, and whatever the other was, Pickerwaite I think it is called. These are fine x ray people, and you should get whichever your technicians prefer."

Wollenberg: Of course the universities were consulted first because they were supplying the service for the City and County Hospital, and their wishes were pretty much followed in buying different types of equipment. If the University of California and Stanford were going to run the service out of the City and County Hospital, as they did in those days, they would be consulted in buying equipment. They would be asked, "What are you fellows working with? What's your opinion of the thing?"

Federal money was to go into this, entirely federal money, and an outfit named Standard x ray of Chicago was approved by the federal government. My father was told that the money would not be available unless he was buying certain Standard x ray equipment. So he went back to the deans, or whoever the people were--the heads of the departments--and they said, "Good God, no. We've had experience with that. Go talk to a couple of counties around who had that equipment forced on them, and don't buy Standard."

So he refused to buy Standard, and he bought the other equipment. I think there were only about three big manufacturers: G.E., Westinghouse, and Pickerwaite. He bought whatever it was, one of those three, for the city. And there was a lot of trouble as a result of it. But ultimately it was paid for--government funds went into it.

And then the colonel in charge of Letterman Hospital in the Presidio came to him and said, "For God's sake help me, will you? We've got this Standard x ray equipment in part of our place, and now we've got money from the army to buy more equipment. The doctors who service us here and I know damn well that this Standard x ray stuff is absolutely impossible. It's no good, it breaks down, it doesn't do a good job, it's not what we need, it is not what we want. How did you get away [with buying other equipment] with federal funds?"

My father said, "I didn't get away with it, I just went ahead and looked into it." He said, "Harold Ickes is the general counsel, or was the general counsel, of Standard x ray. He is married into the family, and he works this thing and he won't approve."

The colonel said, "You're not telling me anything. We know all that in the War Department. But we don't want Standard x ray. We want any other equipment that's on the American market."

This was one of his favorite stories. He went back to Washington at one time on this, and he confronted Ickes with it. He told him what he thought. And from that time on he never had

Wollenberg: any use for Ickes or Ickes's family. This was a personal thing; it had nothing to do with Ickes's ideas on conservation or the rest of it. How true the story is, I'm only--it may be purely apocryphal, but my father always believed it.

[end tape 2, side 1; begin tape 2, side 2]

Wollenberg: --yes, well, Harold did a lot of fine things.

Leiby: Then your father felt warmer, actually, toward Harry Hopkins than toward Harold Ickes?

Wollenberg: On a personal basis, I would say, yes. But he never agreed with Harry Hopkins either! You'd have to know my father. He agreed with damned few people! [laughter] They had to agree with him or else he kept talking all day, as you said many people have told you.

Fry: How do you think your father voted in the subsequent Roosevelt elections?

Wollenberg: I don't believe he ever voted for Roosevelt.

Leiby: You were getting into politics yourself in the mid-1930s.

Wollenberg: Yes.

Leiby: The country was in a terrible Depression. You must have talked to your father about the Depression. Do you remember him saying anything about how this was going to end or how it might end?

Wollenberg: I don't think he was enough of an economist, as such, to know where it was going. I think he was interested in the relief of people, individuals, and what could be done from a governmental viewpoint to tide people over. I don't think he had any ideas of the economy of the country in the long, overall run, because during this time, people like my father were busy day and night, one crisis after another. It's sort of like being in the State Department today, somewhere in a hot spot. There were breakouts of an industry folding and a whole area of poverty overnight, and you had to rush in and feed the hungry.

Leiby: Then you don't remember his losing confidence in the system? A lot of people lost confidence--

Wollenberg: Oh, no! He never did. He was committed to the system of the American government, I think, and all of that. He never, never soured on that. He was completely sold on this country and all about it, up to the moment of his death.

Leiby: As this Depression stretched on year after year, he thought, "Well, recovery is around the corner somewhere"?

Wollenberg: Well, I don't know how optimistic--that's making it pretty optimistic to say it's around the corner. As I said before, I don't think he was an economist ready to make that decision. I think that my father had complete confidence in this country and what it was and what it stood for, and in the president, whoever he may have been at the time.

He may have been a Republican and never voted for Roosevelt, but for all the Roosevelt years he was willing to give his all and his best in trying to make the policy work. He wasn't there trying to break it down. This is why they had so much trouble ultimately making up their minds to get rid of him, until they really wanted to get rid of him badly, in the relief end of it.

Leiby: What did they want to get rid of him from?

Wollenberg: Well, the state director--who was he, the name slips me. Anyway, he was one of Hopkins's boys out here.

Leiby: Oh, he was a federal man?

Wollenberg: Yes. You see, the federal government had terrific power; they were putting up the money, even to the states, and politically they named the administrators. The governors and everybody else got in line without a whimper in those days. They had to, because Hopkins was allocating funds. Don't forget that was right out of the White House, and the most political place in America, under any president, is the White House. Has to be. It's the nature of the thing.

Leiby: Did your father ever mention Wayne McMillen to you?

Wollenberg: The name's familiar.

Leiby: He was field representative for the Reconstruction Finance Corporation, which advanced loans to the states for relief in 1933. At any rate, why did they want to get rid of your father? What was he doing that they wanted--

Wollenberg: Well, it was all a series of things. It was like "ship the snow" and so on.

Leiby: What was his office that they wanted to relieve him of?

Wollenberg: He was the administrator of relief for San Francisco County, where they had a big caseload, where they really--

Leiby: This is why he had to go and talk to Harry Hopkins in Washington.

Wollenberg: Why he went back for his county allocations.

Leiby: Sure, because this is a major metropolitan district.

Wollenberg: That's right, it is.

Leiby: He's the man who actually handed out the funds.

Wollenberg: That's right. And he was a great buddy of all the county people in the state, more or less, from that time on: He worked with them. He'd been president by then already, I believe, of the California Council of Social Workers--state organizations, and all of this thing.

Fry: Did the Roosevelt people force your father out of city relief administration?

Wollenberg: They did not. He left of his own volition. He continued in his city work until mandatory retirement.

Leiby: When you were getting into politics, one of the great issues in state relief here was the relation between the state relief administration, which handed out funds, and the State Department of Social Welfare.

Wollenberg: Right.

Leiby: A lot of people wanted this. Now, this is before your father had anything to do with it.

Wollenberg: Oh, yes.

Leiby: Did you ever talk to him about this? You were in the legislature and you had to make decisions. Did you talk to him about this very much?

Wollenberg: I don't think so. He used to talk about it after it was over, but he never, at any time, would undertake to tell me what I ought to do or not to do.

Leiby: In other words, he did not look upon you as a spokesman in the legislature?

Wollenberg: For him? Oh, no! Far from it!

Leiby: He wanted you to make up your own mind.

- Wollenberg: Oh, absolutely. I don't think he ever told me what I ought to do. In any way.
- Leiby: Do you remember his position on this? Did he look forward to the combination of emergency relief and the categorical programs?
- Wollenberg: They were developing, not as emergency [measures], but they were developing on their own.
- Leiby: Well, the argument was that you ought to combine these two. You ought to combine the programs for the aged and the blind and the children with the programs for the unemployed. Because in many cases the family involved some people in several categories.
- Wollenberg: That's right.
- Leiby: And social workers were arguing that you ought to combine these.
- Wollenberg: Make a family setup--that's what they do--
- Leiby: In effect they did, because they had the same board, you see, for the emergency and for the regular.
- Wollenberg: That's right. And then they relieved that board of the emergency end of it, didn't they? They went into an entirely different idea, into the concept of work and the WPA. Didn't that come after the SERA?
- Leiby: The SERA was continuing in California, and what they did was handle the federal work relief programs.

Governor Olson's Administration and Relief Programs

- Wollenberg: Merle Cooley was the director, and Chambers, a fellow named Chambers, was the director of that.
- Leiby: And Charley Schottland?
- Wollenberg: Charley Schottland came much later--'49. Charley Schottland was not the political man. Olson had a couple of local politicians.
- Leiby: Dewey Anderson was Olson's state relief administrator.
- Wollenberg: Well, Dewey Anderson was, in the beginning, but Olson broke with Dewey Anderson.

Leiby: He broke with him in 1940.

Wollenberg: Dewey Anderson called him a crook and all the rest of it.

Leiby: Yes. They called each other bad names.

Wollenberg: That was a terrific split-up at that time. That's right. Dewey's dead now, isn't he? He's got a brother around, if you're interested. He's a hard guy to talk to. He always was critical as hell of Dewey. T.D. are his initials; what they stand for I can't tell you. T.D. Anderson.

Leiby: What was your personal impression of Governor Olson?

Wollenberg: My personal impression of Governor Olson was that he was a weak man, who right away tried to run for vice-president after he was governor about a year. He went back to the convention and had big signs and a big blow-up at the Democratic convention. He was run by a group of people who had designs, I think, on his job.

And then he was weak, when he knew what was going on. I don't think he was in any way intentionally dishonest on a personal basis, but he was easily imposed upon. Very easily imposed upon. One of his greatest liabilities was his son, Dickie, who was around him at the time, all the time, and men of that caliber, who embarrassed him all along the line.

Leiby: Quite a tragic fellow.

Wollenberg: Very tragic.

Leiby: Here is a situation where the Democrats came into power, and there were great possibilities. But they were frustrated because--you know Olson was sick shortly afterward.

Wollenberg: Right.

Leiby: And he was never the same again. I'm told that this was a very serious stroke.

Wollenberg: I see. You mean right after he became governor?

Leiby: Yes. Right after he became governor.

Wollenberg: I don't know about that. He didn't show it. He was imposed upon very much. It may have been something that affected him but without affecting him so that it was observable as such. So that could be.

Leiby: He lost his wife.

Wollenberg: He lost his wife very early.

Leiby: And he had this stroke that was described to me by your friend, Valeska Bary.

Wollenberg: She'd know better than I. She was closer to him than I ever was.

Leiby: She was the federal representative here, and she was dealing with Olson. She had to go in and talk to the governor, and it was very difficult.

Wollenberg: I had to go in and talk to him. It was difficult, because he was, as far as I was concerned, run by a clique of people. This is true.

Leiby: The State Relief Administration under Dewey Anderson got involved in this system of cooperatives, you know.

Wollenberg: Yes. That's right.

Leiby: Production for use. What did your father think about those? Let's look at that.

Wollenberg: I don't know. I can't tell you that he ever had any real connection with that, to really be part of Dewey Anderson's setup.

Leiby: So, in other words, he didn't tell you, "This is a foolish idea," or "This is the kind of work for use that we need."

Wollenberg: No, I don't think so. But he never was part of that.

Leiby: Did he ever express any opinions to you about the relation of the County Welfare Department to the State Relief Administration? The State Relief Administration had handled the unemployed, and they duplicated one another.

Wollenberg: Exactly. Yes, they did. Relief in the households, and all of that. Sure.

Leiby: Did he ever express a very strong, pronounced opinion to you?

Wollenberg: Yes. I think he felt that the State Relief Administration should have been subordinate to the State Department of Welfare. The theory was to build up the categorical relief programs, to the aged, for example, and let the counties administer them.

Wollenberg: He thought the State Relief Administration should be engaged in things like single men's camps. He believed in those work camps; that was part of his thinking. He thought it should be on a regional basis; it should be something for the state to handle because it was too large for county management, particularly from San Francisco's viewpoint. He thought camps like the one in Santa Cruz, at Soquel, that was down there--I visited that as a member of the legislature at one time. And another one was up in the Mother Lode, I forget the name of it. Gee, I wish I could think just where it was. It was up in the mountains somewhere, in the foothills of California.

I held hearings in connection with these camps. I remember proving--at least witnesses testified before my committee--that the State Relief Administration had built this camp, and they hadn't put in a water supply. So they built a water supply going down--a pipeline. When they got all finished, and they turned on the water at the reservoir that they had built, they found that the camp was higher than the reservoir, and that the water missed flowing in by I don't know how many feet! And things of that kind--I mean where a lot of money had blown. So then they had to put in water down in the valley somewhere and pump it back up to the camp.

But there were all kinds of things like that that may have been due to rush and so forth, trying to get in too fast, poor planning, poor consideration.

Leiby: Do you remember the general view of the legislature toward the problems of relief? Did they think that this was essentially a very temporary problem, or essentially a problem of--

Wollenberg: Well, I remember when Merle Cooley was state director of relief. You remember that name. He testified one day before the legislature as a whole. He had great big charts showing that we'd never get out of the position we were in, and in the progress of the thing, in a matter of ten years. I think he figured it out so that about 60 percent of the population of California would be on relief, and that this was a permanent thing. This was his testimony, and this was his philosophy in seeking money. The legislature turned him down cold on everything he was asking for. We weren't here to stay there forever.

Leiby: Were there any particular individuals in the legislature whom the other legislators looked up to as students of, or authorities on, the question of relief?

Wollenberg: You say other--I was never one. From the Republican and the opposition side it was John Phillips.

Leiby: John Phillips, I've heard that name.

Wollenberg: Senator John Phillips. He was as reactionary as anybody could be. And he was connected, if you know it, with Pro-America--that women's organization. And yet John was smart enough, actually, to know what he was doing to a certain extent. He was pretty well grounded, and a little phony in what he was doing. He was the Republican leader in the senate on this thing. He later became a congressman from Riverside County, I think.

And then of course in the senate we had lots of experts because we had lots of the hangovers from the so-called "ham 'n egggers" in our house. Each was an expert in his own right, running his own way, really, and yet trying to cooperate with what Olson wanted, with what Olson's people wanted. But they couldn't be kept in line because they'd break out all over, here and there. Somebody was getting too much for his area, why he wanted a share of it. Or someone had his wife and daughter on the payroll, and he wanted his cousin, wife, and daughter on. He had to have one more in his family than the other guy. This was what was wrong with the administration at that time. Everybody was in the trough. Everybody. That's why it made it fairly easy always for the opposition that I was part of to keep them off balance, because they weren't--

Leiby: They were vulnerable.

Wollenberg: They were vulnerable at every turn.

Leiby: What I meant was, it seems to me that in a legislative body that has a large element of continuity in it--

Wollenberg: Say, do you know Florence Wyckoff from Watsonville? She might know a lot about this, if she were willing to talk about it. She was in on all this, from the Olson side. She's a darn fine woman. She's done a lot in the--do you know her? She's Professor [Leon J.] Richardson's daughter.

Fry: That's how I knew her.

Wollenberg: Yes. I knew Richardson. She's a swell woman, and her husband and I have been intimate friends--nobody any closer. Hubert and I have been friends for many, many, many years. Hubert Wyckoff. He's a lawyer in Watsonville. Florence is a swell gal, and now she might be mellow enough to come up with what it was all about.

Wollenberg: She used to follow me around the state. This was the interesting part of it--she had an assignment once of watching me. [laughter] You ask her, if you ever interview her, what her assignment was. I never did understand it. But every meeting I'd hold of this committee I was on, she'd turn up in the back of the room, and before I'd recess I'd say that Mrs. Wyckoff is here, "Would you come forward?"

As a state employee she was working for the State Relief Administration; she was on the payroll. I'd say, "What are you doing here? You were here yesterday." And so forth. We used to have more fun with each other.

Fry: What committee was this?

Wollenberg: This was a committee investigating the State Relief Administration, of which I was the chairman.

Fry: Was that in Olson's administration?

Wollenberg: Yes, Olson was governor. Gee, I wish I could find some of those old transcripts of our hearings. I had them for years, but where they are now, I don't know. I'll have to go down and look.

Leiby: What was the purpose of the investigation?

Wollenberg: The purpose was very clear. It was that they had a lot of funds; it was a big hunk of the state budget, and a lot more was always being demanded. They always had bills for more money, more money, more money. And it was a question of determining, from the legislative viewpoint, how far they should go.

Now, don't confuse this with another committee that was running around at the same time under the chairmanship of Sam Yorty, now mayor of Los Angeles, and Jack Tenney investigating the relief administration and the Communist influence, and so forth. This is not that. This was one based upon an investigation to determine, to try to predict, caseloads, to try to predict where the money goes, where it should go, encompass some legislative programs, and problems.

Leiby: Do you remember what your findings were?

Wollenberg: You mean the ultimate recommendations? We opposed. Our findings were that we should take this thing in bites. Not for big, long periods, but maybe appropriate money a year at a time, or for even less than this at a time, to meet definite caseloads as they came along the line. You see, the state at that time was issuing warrants, I believe. If you worked for the state or the

Wollenberg: university, you weren't getting a check for pay, you were getting a warrant. Though the banks had arranged to take care of it, so you didn't have to lose any money when you deposited it.

Leiby: It was an IOU.

Wollenberg: It was an IOU. The bank took it for its face, and the state reimbursed the banks. I don't know whether you could get banks today to do that. The banks got together and said, "We'll take state warrants for a while, without charging you something for that warrant." They waited till the legislature had the money, and then they got reimbursed for what they had advanced. But they may have carried some of these as long as thirty, sixty, ninety days or six months. As tax monies came in, they got reimbursed on the warrants.

Leiby: In discussions of the determination of welfare policy there's often a lot said about lobbies and influences on the legislature. Do you remember any of those as particularly impressive? The Associated Farmers was supposed to be a very influential lobby.

Wollenberg: It was, at one time.

Leiby: In regard to relief policy?

Wollenberg: That's right. Of course, they had the same thing you've got now with the Chicanos and the grapes. I remember San Luis Obispo County wanting pea pickers. And you had the farmers' rage--"We shouldn't be paying relief if there is a pea-picking job down there. They've got to go down and pick peas," you see.

Leiby: Well, they wanted to pay less than the relief administration was going to. The pea growers and the other people wanted to pay less than the State Relief Administration would.

Wollenberg: I don't know that it was actually less, but whatever it was you had to work real hard, so that it would amount to less, I guess.

Leiby: How did you feel about this? Did you feel that it was right to pay people--

Wollenberg: I wasn't involved in what they were paying. I thought it was right to give relief on a subsistence basis, but I didn't enter the economics of the labor market.

Leiby: Do you remember talking to anybody in the State Department of Social Welfare? Was there anybody in the State Department of Social Welfare at that time whom the legislature trusted? They would talk to members of the board; they would talk to Martha Chickering and others. Did they ever talk to any of the staff other than Martha Chickering that you know?

Wollenberg: Sure they did. They were all there.

Leiby: I guess it was after you left the legislature, it was in the 1950s, that Verne Gleason became the contact man. He was a statistician, and he worked in the legislature.

Wollenberg: Yes. I remember Verne Gleason. Is he still there?

Leiby: Not any more. He's my main contact with the department.

Wollenberg: Ah, yes.

Relief in the War Years

State Guard

Wollenberg: Actually, under Olson with Chickering, I think it was completely subverted to the other things they were interested in. They made one last attempt during the war, you know, to put the state guard that they organized over and above relief. Single men, anybody--there wasn't really anybody who couldn't get a job, then.

The relief was over when the war really got going, but there still was a group that were either incapacitated or somehow or other they wanted in the state guard. They then made the attempt to take the old State Relief Administration philosophy and keep it and throw it into the state guard, which was a hybrid thing, you know. It was not the National Guard, under federal regulations; it was a state guard. The National Guard had been mobilized and was off at the war.

Fry: Oh. This is the one set up through counties?

Wollenberg: Yes. It had a big, crazy, top-heavy kind of organization. First they started to claim that they were organized like a home guard would be, to defend us against our enemy. That would have been legitimate, if they'd stayed with that, but then it became a state guard to--I don't know, just what it was. It wasn't used because we didn't have strikes at that time.

Leiby: You said that they took the SRA philosophy, and I don't understand.

Wollenberg: The relief end of it. They were paying off a lot of the people who had been administrators in the old SRA. You found them later administering the state guard--if they had enough push, and nothing else to them so that they couldn't get into war work, or go off in the service, or one of the many supportive civilian ends of service. The SRA became a sort of dumping ground for a lot of politicians who couldn't do anything else. But they had to support them--take care of them. This was all under Olson. It was immediately abolished when Warren went in as governor.

Fry: That was a major point of friction between Attorney General Warren and Olson.

Wollenberg: It became quite a campaign issue.

Fry: Yes, civil defense organization.

Wollenberg: So-called civil defense, that's right--that Warren set up as a county effort--more by the people in the areas and so forth. SRA tried to hook that.

Fry: Did you say that SRA policy began to permeate state guard? Did they try to put these guards to work?

Wollenberg: Well, I shouldn't say policy; I'm talking about taking care of personnel, not policy. The job was different, see. I mean it resembled SRA in that it was a clearly political thing.

Emergency Relief Act, 1945

Leiby: In 1945, the state passed an important piece of legislation, the Emergency Relief Act. And this was designed to resolve the difficulty that had arisen over the relationship between SRA and the state department. It said that if unemployment reached a certain level, which they fully expected--

Wollenberg: In '45, though, we were in the middle of the war?

Leiby: Yes, but after the war they expected--

Wollenberg: Oh, all right. Yes.

Leiby: After the war the governor would declare an emergency, and then, at that point, the state would start to finance local relief for the unemployed.

Wollenberg: Yes. That's right. They used surpluses at that time.

Leiby: Do you remember very much about that legislation?

Wollenberg: No, other than that we had surpluses. It was never effectuated, was it? This policy was never put in; it never reached the people.

Leiby: No, it was never put in, and my understanding of why is that no governor in California is going to declare an emergency.

Wollenberg: We had some recessions, but don't you think that part of it was because we never reached a stage of unemployment where the state had to step in when the counties couldn't carry the load?

Leiby: Then in your view this was a serious piece of legislation?

Wollenberg: Oh, I don't think there's any question about it. It was an attempt to fix the burden at some point where the governor would have to act. I don't agree that no governor would ever declare an emergency if the counties were going broke or on the verge of being unable to carry the burden. I think a governor would. We haven't had any counties approach that. I don't know one county that ever got down to where they were in serious trouble because of relief, since '45, do you?

Fry: Yes.

Wollenberg: Where?

Leiby: Right now.

Fry: Del Norte.

Tax Redemption

Wollenberg: Well, but they had a tax-forgiveness thing. All that land in Del Norte was owned by timber owners. It's changed hands, of course, and several times, but at that time I think the Hammond Lumber Company owned about two-thirds.

Fry: Or maybe Miller?

Wollenberg: Miller?

Fry: A redwood company.

Wollenberg: Yes. Well, Hammond had redwood and pine. Hammond had everything under the sun you could think of, as far as wood was concerned, clear up to Washington--Puget Sound, including a steamship line. But the big massive landowners quit paying taxes entirely. That's why Del Norte County got in trouble.

We had passed a lot of laws which gave relief to taxpayers who were in trouble, and it operated statewide. You didn't have to be in trouble. If you just didn't pay your taxes, you had so many years for redemption. There was a procedure by which you made so many payments, a very light payment per year for redemption of old taxes, if you were able to pay up your next year's taxes. The taxpayers just quit paying their taxes up there in Del Norte County and went on the redemption program that was set up at that time.

Fry: I see.

Wollenberg: Now, the program may have been fine for San Francisco and Alameda Counties and Los Angeles and residential-in-form counties, where small groups were in trouble. But this was timberland in which they never intended to cut the timber. They were holding it because it should be held, not only economically for future speculation--it isn't all redwood in Del Norte; Del Norte has some other stuff.

Fry: Yes. In the east.

Wollenberg: On the east side. Are you from up there?

Fry: No.

Wollenberg: It's a great county. If you've ever driven that road from Crescent City over to Grant's Pass through the Oregon cave country, after you cross the border, that's beautiful, great country!

And this is what happened in Del Norte County.

Fry: I see. Was that fairly recent?

Wollenberg: Oh, no. The time we're talking about is when redemption went through. When we had all this recession--whatever you call it--is when tax relief was put through. This was early in the game, and the legislature set up a redemption period and all that, so people could save their homes and their taxes. But the big taxpayers, particularly in Del Norte County, got in trouble. I think if you really can get in and document all this, you'll find a lot of it. Del Norte County--the major part of the land--is owned by damned few people. It's big corporations in the lumber business who were not cutting at that time because people weren't building.

Wollenberg: Of course, during the war there was plenty of market for lumber, the government and so forth, but there were darn few people available laborwise to cut the lumber. It was to the taxpayer's advantage--something like the situation I'm told exists today, where a lot of people don't pay their taxes because the penalty is only 6 percent.

Fry: Cheap money to borrow! [laughter]

Wollenberg: Yes. And if you can't get money any other place, it's the cheapest. This was the situation at that time. And Del Norte County has been notorious for the failure of those landowners, and they're big corporations, to pay their taxes. It's cheaper for them to keep up the slight redemption payments over the years, and the county couldn't do anything.

Furthermore, the type of labor that's up there can move pretty rapidly; it's big, heavy, strapping, outdoor, tough labor type. It's one of the few little hardcore places--a lot of Indians on relief there--always have been in Del Norte County. The Klamath tribe that comes down the river there, near Requa. They're clear through up to Klamath. And in the fishing towns there are some old families that have been around, where the women can all work--scraping fish and canning and things like that. But that's about it, there.

Leiby: Gee, how do you know all this about Del Norte County? You just picked this up?

Wollenberg: I don't know. [laughter] I was in the legislature--these are all things I studied in the legislature, investigated, all that time.

Fry: Was the legislation you just mentioned the result of some of the taxation studies under the Earl Warren administration?

Wollenberg: Some of this was even prior to that, and then some of it was during. Right. My recollection is I voted against these tax redemption things. I was being lobbied by some big corporations to put this thing through, and I became suspicious as the devil of it. I think this is when I learned about Del Norte County. This is just something I acquired.

Same thing was true over in Trinity County to a large extent. There are a lot of mining claims that are owned by big outfits. There's a lot of timber in Trinity County that's being held in reserve. And of course there's an awful lot of federal land in Trinity County--more than in Del Norte, I think, percentage-wise--parks and national forest, things like that.

- Leiby: I have just a couple more questions here. One is about McLain. Did your father know George McLain?
- Wollenberg: Oh, yes. Sure. Fought like hell. He only knew him around Sacramento--in connection with the [Social Welfare] department.
- Leiby: What was his view of McLain? Did he think of him as a scoundrel, an opportunist?
- Wollenberg: Yes. Absolutely. I think he thought he was an out-and-out scoundrel, and an opportunist, and that he clearly was living off the so-called senior citizen, the old people that he organized.

State vs. County Administration of Welfare Funds

- Leiby: McLain had two constructive ideas--at least from McLain's point of view, not from my point of view. One was the idea that benefits ought to be considerably higher for the old people. Then there was the idea of state administration rather than county administration--direct state administration. Now, would your father have objected to either of these in principle?
- Wollenberg: I think he may have objected to direct state administration in principle.
- Leiby: That's what I'm especially interested in.
- Wollenberg: I don't think there's any question about it. I think McLain's interest was in that. There he had the pressure. On a state-wide basis he was in a better position, politically, than if he had to go out and put his political pressures on fifty-eight counties. I mean all fifty-eight didn't fall under his organization, but a substantial number of them.

I don't think there was any question McLain could scare the holy devil out of a lot of legislators just by showing up, because they were always afraid of his organized, vociferous groups in his counties.

- Leiby: He, of course, claimed that state administration would be more positive in favor of aid to the old folks. And Myrtle Williams, his assistant, got in as director of state welfare when his ballot proposition won in 1948. She actually went around and would visit these places where they'd come in and make application. And she'd say with a good deal of indignation, "This is terrible. There are no curtains on the window. The lines ought not to be so long."

Wollenberg: Yes. That's right.

Leiby: Now, it's surprising, in the department, although everybody thought McLain was a fraud, nevertheless there were a lot of people who thought that (a) state administration is a good idea, and (b) we ought to treat the recipients nicer. And so there was a real, sharp division.

Wollenberg: Sure, I think you ought to treat all recipients nicely and everything else. I don't think there is any argument about that.

A lot of that depends upon what you can afford to set up as the relief administration headquarters. There were times they were upstairs and people had to trudge up a lot of steps. Sure, that's terrible for old people and all the rest, even women and children. They ought to be accessible.

But I don't know that they all had to be furnished like the lobby of the Fairmont Hotel. [laughter] It's nice if you can maintain them. I think at the time it was just a matter of standardization. I think the state tried to set up standards that the counties could live by.

Leiby: So your father was definitely in favor of county administration, as far as you know.

Wollenberg: I don't think there was any question he was. I think so. He could fight like the devil with county administrations and boards of supervisors and then be very friendly with them on a personal basis.

Leiby: What was his thinking here--did he ever reveal it to you? Why not have state administration?

Wollenberg: Well, I don't know that he ever felt, "Why not?" I think that it was the basis of--I think he believed in state standards, he believed in all these things.

Leiby: Oh, yes. There's no question about that. What I'm thinking about is--

Wollenberg: I know what you're talking about, but I'm trying to think of what he may have been interested in. It isn't just a question of state administration, or out of the picture with the state. I think he believed in a degree of it.

[end tape 2, side 2; begin tape 3, side 1]

Leiby: The question is this: The argument for county welfare administration, as I understand it, is that county administrators are somewhat closer to their constituents. And many state

Leiby: directors--all the state directors since your father (I haven't talked to any who were there before him, of course)--all come in to office thinking that this is a fine idea. After they're there for a little while, they turn around to thinking that maybe state administration is better because then you can give orders, and the orders are going to be carried out. You don't have to bicker with the county supervisors, and so forth.

Wollenberg: Well, I would agree with this, and I think my father had this idea too. You know, the people who are paying the bill are the people who should be considered. Now, it's true that the county only has--what is it?--15, 17 percent and the federal government 50 percent, roughly, so that you've got 35 percent roughly in the state, and most of that is allocated to administration costs, as I remember. But if the state takes over the administration, will it relieve the county of that 15 percent? Have they ever said they'd want to relieve the county of anything?

You know, it's great to have a Christmas tree with a lot of fine ornaments on it when you don't have to go to your board of supervisors and account for things, and justify budgets, and file budgets. The counties will agree to state administration immediately if you'll relieve them. Ninety percent of the counties will jump if they can save their tax rate, and go aboard.

The history of that can be found in your tuberculosis subventions from the state. When they first started on these, the counties organized their own joint TB. And then all of a sudden we give subventions for TB directly into the counties--the health departments, or whoever administered it, I don't know.

Leiby: It's public health.

Wollenberg: So you get subventions. They were adamant as hell in the beginning, you know: "Oh, no. The state keeps out of the TB thing. We're going to run it." But as soon as state money is offered--under their nose--it's just like the bone to a hungry dog, Mother Hubbard's cupboard gets bare. If you really want to do this--and I think Charley Schottland was great with this--you pick up the bill and you're not going to have any problem.

So, it isn't so much your administration--it may be better at some times; under Charley Schottland's reign it may be better. But realistically you've got to get together and find out who's going to pay this bill. What's the unit--how much are you going to hang on the counties, for example? And as long as you're still going to have something, as much as 15 percent, on the counties, and 35 percent to the state is no bargain, because Big Uncle Sam's taking care of 50 percent--and he's setting all kinds of standards.

Wollenberg: You can't get out of line with Uncle Sam; that's the first whip that's cracked on your back, and that's good--you've got to do it that way. So you're going to have state administration, and what's that going to mean? Conformity only? With Uncle Sam? For another 50 percent? Will the state take 50 percent? Will the state take a full 50 instead of 35? You see, the 35 they pay practically all goes into the administration--into their administration--into a very elaborate state setup that exists. I don't know that it's that high, but it's pretty close to it, I think, if you have the breakdown.

For the people in the counties, from their viewpoint the administration of the programs may appear a little better because of the fact that the county administrator and his board of supervisors are only interested in 15 percent of the bill that he's running up locally.

Now the state is catching hell. Schottland, or anybody else that's the state administrator, is catching hell from the legislature and all its committees about his budget and what he's doing. And he gets mad as the devil, because money for administration and other things is being spent down the line by counties that he can do very little if anything about. He gets frustrated, and he has to account for these things.

He's got really nothing to say, because Uncle Sam's got 50 percent of his load on his back, and he has to live right up to that, to those standards. And the county man is spending the money, and sure he feels a little helpless.

But I'm not so sure that the recipient's going to be any better off because of this situation at all. It's a theoretical thing. I'm not charging anybody with any misconduct, because I'm sure there is none. I'm simply saying it's a natural thing. He's frustrated as the devil.

It's the story of all this subvention business. As soon as subvention starts, the people that are giving the subvention want to grab more control, more control, more control. Sure, they say they want more control. They want it--I don't blame them, because they're putting more money into the thing--subvention. I don't want you spending my monies, any more than you want me spending yours! [laughter] But if we're partners in something, we can get along good as partners because it's a joint enterprise. But none of these partnerships are on a fifty-fifty basis; they're dominated.

Leiby: Looking at the welfare situation, at the attitudes toward the recipient, the general picture that I get is this: the local supervisors--they're the elected officials--and the local administrators whom they support, tend to be relatively restrictive and punitive, relatively, toward the client.

Wollenberg: This is not uniform. Butte County is probably worse than Orange County today--right now.

Leiby: Is that right. Worse than Orange?

Wollenberg: Oh, I don't think that Orange is so bad, compared to Butte and Alameda Counties. Do you think Alameda County, as a county, has got a better record than Orange?

Leiby: It's the valley counties that are often thought to be very tough.

Wollenberg: Yes.

Leiby: At any rate, then you move up to the state level. And the state legislators, who make policy, and the state administrators, who carry out this policy, are generally viewed as much more respectful of the rights of the client. They are much more interested in higher standards and believe in more constructive policies and assistance, in addition to material relief.

Wollenberg: Agreed.

Federal Attitudes on Relief Expenditures

Leiby: Then you move up to the federal level; and if you look at the men that the people of California elect to the federal legislature, the senators and congressmen, and if you look at the federal officials that are appointed here--

Wollenberg: I'm hanging on what you're going to say about it!

Leiby: They're relatively more liberal than the state.

Wollenberg: Elected officials?

Leiby: Federal.

Wollenberg: Federal elected officials, you say--congressmen and senators?

Leiby: Sure. It's like you say--

Wollenberg: Who've you got in the state setup to compare with [Senator] George Murphy, as a liberal? Who've you got in the state setup? You can write down a lot of these people as liberals.

Leiby: Well, Murphy was recently elected in a conservative--

Wollenberg: He's the senior ~~Senator~~ from California.

Leiby: Yes, but he was recently elected in a conservative swing, and I think--

Wollenberg: How about the governor of the state? Do you think that Murphy is more liberal than Reagan? Is this what you're trying to tell me?

Leiby: I think this is a temporary aberration--Murphy and Reagan. Historically, the governor of the state--

Wollenberg: Knowland is more liberal than--let's go back to Knowland. Who was the senior ~~Senator~~?

Leiby: Tom Kuchel.

Wollenberg: All right. Tom Kuchel was, I grant you. All right. But name me one other.

Leiby: Earl Warren.

Wollenberg: Not elected to any federal office.

Leiby: No, I know. But it's very interesting, Earl Warren was a much more liberal man as governor of the state than he was as an attorney general of Alameda County.

Wollenberg: You mean district attorney?

Leiby: I'm sorry, yes, district attorney. His main thought about welfare was to get tough on the AFDC.* And he was a typical man, you know, like Brown was, when Brown was--

Wollenberg: Was he tough?

Leiby: As district attorney in San Francisco? Sure.

Wollenberg: I don't think anybody in San Francisco ever got tough on anything. It's the most permissive city and county in the West--on everything--take any subject. They got homosexuals all over--nobody bothers them. You've got topless and bottomless, you've got anything you want. Go to any judge in this county and watch his court compared to what you've got in Alameda County.

*ADC became AFDC in 1962.

Fry: Did Brown try to crack down on Aid to Dependent Children?

Wollenberg: Yes, I was going to ask. Did he--Aid to Dependent Children? I don't think he ever cracked down on anything in his life.

Leiby: Oh, he got more liberal when he got to be governor than he was as--

Wollenberg: Than he was as district attorney?

Leiby: Oh yes--sure!

Wollenberg: Well, sure! I'll agree with that--when you're governor of everybody, yes. You may be right on an administrative level.

Leiby: You've destroyed my question, because you don't accept my basic premise.

Wollenberg: Yes, I should, I guess.

Leiby: My basic premise is that federal officials are more liberal. Federal legislation is more liberal than state legislation.

Wollenberg: All right, legislation. Yes.

Leiby: Well, that is the product of legislators, and the administration is more--

Wollenberg: It's made up of a bigger hunk of people.

Leiby: I'm inclined to think that the people that California represents--

Wollenberg: I don't know that it is today. I mean you've got to talk about times, too. You're not giving credit to cycles that we live through.

Leiby: Oh, sure. You look back in the 1930s, the people of California were voting for Franklin Roosevelt, and they knew what he stood for. At the same time, at the state level they were voting for Merriam and against Upton Sinclair.

Wollenberg: This is a little different with Upton Sinclair. He was no liberal--it's a different story.

Leiby: Then at the county level they're voting for--who are these famous supervisors, who was that man, supervisor now in Alameda County? I can't think of his name.

Wollenberg: Yes. That's right. They do that.

Leiby: Basically, all of these people represent the same constituency. This is my question: the people of the United States, when they vote, elect people relatively conservative on welfare for their local officials. For state officials, if you buy my premise (which you don't), but let's make this assumption for one minute that state officials are relatively more liberal and that federal officials are relatively more liberal than that. But all of these people--

Wollenberg: Well, what do you think those people will do? Do you think--unconsciously, subconsciously, whatever you want to call it, but not directly, purposefully--if you change this, that you may cause even more reaction than you've got on a national scale? More reaction than you've got on a state scale? You see, I don't buy your premise because I see Mr. Nixon, and I see Mr. Reagan-- And I don't think that Alioto--

Leiby: Well, even Nixon is more liberal than Reagan, certainly.

Fry: On welfare, I guess.

Wollenberg: Well, he talks it, but what has he done? [laughter] What do you mean? You and I are both Republicans, so we can talk very frankly to each other, can't we?

Leiby: I'm a Democrat and a liberal. [laughter]

Wollenberg: I thought you told me--I don't know where I got the idea. Good. Anyway, I'm a Republican.

Fry: You both sound alike to me. [laughter]

Wollenberg: But the point along the line is that you get tampering with human beings in their setups along the line, and you start monkeying along the line, and you might wreck more than you do. With it all, as hard as it is to drag this out and to get decent administration, as difficult and as tough as it is--everyday something's happening.

Court Decisions Regarding Relief

Wollenberg: Right now it's the courts doing the administration of relief. I've sat on three-judge cases, and my father must be just whirling in his grave. If he could read my opinions on relief--the administration of relief.

Leiby: Tell me about this, quick.

Wollenberg: I mean he certainly would--I feel he would. I told you about [William] MacDougall of the [County] Supervisor's Association, didn't I? Calling me up and telling me, "You know, if your father was alive, he'd disown you."

And I said, "Well, so what, Mac? What the hell's bothering you? That's between me and my father. He isn't alive, and I won't have to face him, I hope, for a few years yet." [laughter]

Leiby: You never explained the decision in that particular case.

Wollenberg: There's two or three of them. This whole business of--what do they call it--they've got a name for the strange man in the house. In those decisions.

Fry: In the child-support cases?

Wollenberg: Yes, in the child-support cases. On the whole budget, where the state sets a budget. Well, you know--there are ten kids and then they drop the allowance per child. And the next one, you know, you can't get any credit. I think you get three dollars or something for each one. What's the sense of that, when they publish a budget that says how much it takes to support a child in the house? Then all of a sudden they say it doesn't cost that any more when it reaches ten. We won't pay any more than \$500 a month or something like that--I forget the figures.

I wrote an opinion on that, and I held that to be an unconstitutional exercise. That's on appeal to the United States Supreme Court--direct appeal from our decision.

Leiby: How did the other judges vote? One of them, at least, agreed with you.

Wollenberg: Yes.

Leiby: Did the other one disagree with you?

Wollenberg: Yes. Hamlin from Alameda County disagreed.

Leiby: Hamlin disagreed?

Wollenberg: Because he'd go along only on two. He said, "For God's sake, I'm upset--I can't keep this up!"

Wollenberg: And I said, "Well, it's too damn bad. So you write something."

So he wrote something that he copied out of the attorney general's brief. I may be wrong, I may be wrong--the Supreme Court may go the other way. That's quite possible.

Leiby: So he said that the state does have this authority, to control the grants?

Wollenberg: Well, he said there's no unconstitutional exercise in the manner in which they're doing it, you see.

Leiby: And you judged on substance.

Wollenberg: Yes.

Leiby: Very interesting. And you think your father would consign you to hell--

Wollenberg: My answer to MacDougall was, you know, "My father's been dead a few years. And I've always thought, Mac, that the difference between you and he is that he grew with the times. And I don't think you ever did, for the long time I knew you."

I haven't seen him since I left the legislature, and all of a sudden he's my buddy--he's gonna call me up to tell me about something. And he tells me this. And I said, "Well, the difference between you and my father is I at least have enough respect for the old man to think he'd have changed with the times, regardless that he's a lot older than you. And I don't think you have." And the concepts of law that are involved. It costs the counties one hell of a lot of money, this thing.

Leiby: With regard to the social security, with regard to the public assistance programs, the greatest strides in the last five or ten years have come, in your view, in these court cases?

Wollenberg: Court decisions. Right.

Leiby: And what the courts have done is insist that the law be enforced?

Wollenberg: This is right.

Leiby: Because before that they were not enforcing this as law. They were not carrying out the law. Through one subterfuge or another, through one administrative policy or another, they were defeating the ends of the law.

Wollenberg: Correct. This is right.

Leiby: This has been one of the most wonderful results of this, because these people can't really be against the law, you know. You've just got them.

Wollenberg: And this, of course, has a lot to do with the Warren Court. It's been the nature and background, and so on, of the Warren setup. This is what he wants.

Leiby: It's 11:15 [p.m.].

Wollenberg: As you've found out, I'm kind of a nighthawk with this thing, when I get started on it. I'm used, you see, to keep on going. I'm used to smoke-filled rooms, like in the old days. [laughter]

Fry: I wish we could go on. Well, you and I will.

Leiby: Yes. I deliberately stayed away from health insurance and a number of other topics that I know Chita wants to--

Fry: Yes. We have a great plot hatched over here for you.

Wollenberg: Oh, really?

Fry: Yes. On nonwelfare matters. We won't take time to develop our outline tonight. .

[end tape 3, side 1; tape 3, side 2 blank]

II ALBERT C. WOLLENBERG, LEGISLATOR

[Interview 3: 17 February 1970]
[begin tape 4, side 1]

Assembly Ways and Means Committee

State Relief in the 1940s

Fry: Here's your [noise of shuffling papers] "Report of 1945," and here's a list of names of people we think are probably relevant.

Robert Burke* writes that on December 17, 1940, former finance director John R. Richards gave a hospital bed statement to you and Senator John Phillips. You were chiefs of the Joint Legislative Fact-Finding Committee on Employment. Richards said he had resigned because of administration attempts to force state contractors to contribute campaign funds and because of Olson's use of the SRA to provide jobs for political friends.

Wollenberg: Richards was Olson's retiring director of finance, and he was attacking Olson. Now, I never--goodness! I can't ever remember being in any hospital room, and I can't remember any more than just a casual acquaintance or a conversation with Richards. I know I didn't have any of the type he describes. Where he'd get an idea like that, the Lord only knows; I don't know.

Fry: There'd be only one other person the author could get it from, and that would be Richards, wouldn't it?

Wollenberg: If he's around and available.

*Robert E. Burke, Olson's New Deal for California, University of California Press, Berkeley and Los Angeles, 1953.

Fry: He was around. He wrote that quite a while ago, in 1953.

Wollenberg: Oh, yes. That's a long time ago. He could've gotten it from some of the reports of John Phillips, who was also there. I don't doubt John was there, because Richards and Phillips were good, close friends at this period. Sidney G. Rubinow, who had been fired as the State Relief administrator at the time, was also making all kinds of statements about Olson.

But I was not in any of those conversations he puts me in, in that book. I had the book at home--I don't remember ever looking at it before in any detail to find anything.

On a discussion of administration and policies, he talks about the Johnson-Wollenberg bill that established, he says, and froze-in the county administration of welfare. Now, all that bill was, because a little later you could see it, was a stop-gap appropriation bill.

The legislature hadn't appropriated any money at all for relief; SRA had enough to run about another ten days, and they were going to be out. They were fighting over the administration bill, which--I forget the amount, it had an astronomical amount of money. The case load was descending, see, month by month. These were the war years, and the State Relief Administration--unemployment, everything, was just disappearing--was ultimately skidding down to its great low at the time.

The legislature was just fighting over how much should be given and what limitation should be put on it, and we passed--Johnson and I prepared a bill to stopgap it--just an appropriation, straight appropriation. We didn't monkey with administration at all. We got them to pass it.

Now, Burke says it's the bill. He may mean that the alternate bills at the time would have done something (what they would have done, I don't know) generally to administration. But all we did was leave the law the way it was and throw enough money in so that they would still be able to continue; that's all this bill did.

Fry: That's different from "freezing" it.

Wollenberg: That's right. I haven't read the bill in twenty years--so, goodness gracious! But that's my impression now. And all of these things are really different than I conceive the facts to be. That's all I'm trying to say.

- Fry: In this, as in good reporting, you have to talk to more than one person involved in order to begin to get even half of the picture.
- Wollenberg: This is right. Sure.
- Fry: I guess when you're a young man writing your dissertation, you try to do it as rapidly as possible. [laughter] But it is unfortunate that this then becomes the basis for further research--
- Wollenberg: Yes. When it's taken as a granted, you know.
- Fry: --sometimes compounding the error.
- Wollenberg: After talking to Professor Leiby, I was thinking that we had a very superficial conversation concerning county administration versus state. I remember mentioning to him that you have to take into consideration the taxpayer and who's carrying the load, and I didn't know the percentage. I asked what load does the county carry now. He said 15 percent; and the state 35 and the federal government 50 percent.
- Well, I don't think that was the proportion of the county share back at that time; I think the county carried almost 50 percent at that time. And I didn't think of that to answer the question of county versus state administration of relief, see. I haven't got anything to do with it today; I don't know enough about the setup today to advocate one form against another right now. But I was thinking back to the time when the county taxpayer was carrying a real, substantial piece of the load.
- Fry: Professor Leiby was trying to get your idea, as someone who was on the scene in the legislature, of the varying constituencies of welfare and the relative power of welfare legislation as it's enacted on the federal and state and county levels.
- His feeling was that as you proceed from county up to federal, legislation probably gets a little more liberal. Traditionally counties have been less liberal in welfare legislation, and by the time you get to federal legislation--since the thirties, they've been more liberal. And how come, since the same people are voting for all allocations--
- Wollenberg: The point I was trying to make, and didn't make clear, was that I think the answer to it is not in the individuals that are involved but in the closeness of the county people to the taxpayer--the tax load. They've got so damn much they have to do with such a little amount of money. It's good to have

Wollenberg: someone in there watching the purse strings. They now have to raise 15 percent, according to Professor Leiby. But there was a time, I'm sure, it was closer to 50 percent, if not more.

Fry: But I think that 15 percent even now comprises much more than half of the whole county budget.

Wollenberg: Correct. This is right. Much more than half of the whole county budget.

Fry: So it's still a big load on the property taxes.

Wollenberg: You bet it is. So until something is done about the tax base, where the funds are coming from (which the professional welfare people have never bothered about that I've ever heard--they leave it to others to find that), they're going to always be faced with the taxpayer, who is essentially a conservative person, who is going to scream to high heaven. And with the real estate and that tax load on the county, the county taxpayer is who they're going to hear it from. And it's got nothing to do with--

Now, the national figure who votes on relief says, "Well, look, we've got X dollars." It doesn't make any difference (because these are hidden all along the line) as to where they are coming from as far as the taxpayer is concerned. That local taxpayer feels very happy if it's federal money that's being dumped in his county; he thinks he's being saved something.

Fry: It's everyone else's money.

Wollenberg: It's everyone else's money. So the member of Congress who votes on an appropriation bill for that purpose doesn't have to face the taxpayer with the same trepidation as the local supervisor. This is where it all lies, not in the difference in the individual who's elected, but in the difference of where you get the money from.

Fry: And the fact that relief is one of the biggest--

Wollenberg: Biggest single chunks--this and education.

Fry: In a county, yes. In a county this would make it more important than on a federal level.

Wollenberg: This is right.

Fry: Your appropriations are spread out over a wider range.

Wollenberg: Right. Yes. And it makes good local press. It's a good local story--the relief story. Gee, every little chiseler on relief gets a great big play in the newspaper.

Fry: I don't know what legislation was like then, but I might as well throw this question out to you: On the state level, were you aware of the taxpayers' associations, and so forth, lobbying regarding welfare measures?

Wollenberg: Oh, yes. Peirce. He later became the man who did most of the lobbying and work. He would deny he was a lobbyist; he'd call himself some kind of an analyst. John M. Peirce--he was director of finance under Goodwin Knight. He worked for the State Chamber of Commerce, too.

Fry: And he was the one who more or less guarded the purse strings on welfare legislation?

Wollenberg: On most appropriation stuff, yes. Right along the line. He was a great source of material for Vandegrift, Rolland A. Vandegrift.

Fry: Was John Peirce a state employee?

Wollenberg: Vandegrift was, John wasn't until he became director of finance.

You know, figures get hard and complicated for most people, and when you start talking millions and millions, the average person doesn't know what the hell you're talking about. It's something that they have no concept of. And the average legislator doesn't either. He's no different than the average guy. So there are always about a half a dozen organizations and people who have these very pleasant, very nice guys, who have an aura and a mystery about them, of knowing figures, knowing just the answers and how they come out.

It's like a person going to his banker and thinking, even if you just want to buy a house, that he has the answers. He knows what I should do; he can tell you what you should do. What's it worth? He can tell you what it's worth.

It's no different than that. And they have a great deal of power in the legislative process, these people. Simply by mystery, that's all. They're no better than anyone else who has any intelligence and will sit down and analyze what it's all about.

I don't think the professional welfare people--the attacks they've attempted on these people have been through the organizations. In other words, trying to label them something

Wollenberg: (you know what I mean?) rather than an analysis of where money comes from, what taxpayers should take an interest in, and what it means. I bet a lot of taxpayers who protest the cost of relief are not really taxpayers. If someone would take the trouble to figure out what it means to so many of these protestors, it wouldn't mean--except on the national picture, perhaps. It might be dangerous; you might show that they should have an interest and they haven't. [laughter] Awfully hard to get that story over. No one's been able successfully, that I know of yet, to get it over.

Fry: You mean about the role of these mysterious statisticians?

Wollenberg: That's right, plus the impact on the individual who thinks he's against something, and maybe he shouldn't be against it. Maybe the impact on him is not as great as he thinks it is. Then you might develop it, though, and show that it's really greater than he thinks it is. [laughter] So, you'd have to be careful there, I guess.

Fry: What other organizations besides the taxpayers' association and the Chamber of Commerce would have these people around?

Wollenberg: The county supervisors, and, you know, a lot of public organizations, semipublic like supervisors and cities and so on.

Fry: In my mind we haven't really started our interview yet--I'm still preparing things here. I wanted to ask you one other thing on the Ways and Means Committee. It seems like so many things go through the Ways and Means Committee.

Wollenberg: Yes. Anything to do with an appropriation, with money--the spending of money--has to not only have the approval of, say, the social welfare committee that handles welfare affairs, but it has to come over through the ways and means, and they're to decide, can we afford it?

Fry: You were the chairman of this committee in the assembly, for two sessions?

Wollenberg: For three or four sessions, I guess.

Fry: What were your biggest battles, things we should be sure not to overlook?

Appropriations for the University and State Institutions

Wollenberg: You've got most of them there, I guess. Every appropriation that came along in the welfare field. All the appropriations to do with education; all the appropriations to do with the state hospitals, and institutions, including prisons. The budget--each time the budget came through we were supposed to analyze the budget, line by line. The special appropriation bills: Gee, I could talk about the problems with the university by the hour.

Fry: Oh, good.

Wollenberg: The university budget was always troublesome--terrible to handle. That is because the regents had complete control. That doesn't make any difference. The regents were the one level that could never tell us, for example, the cost of educating a student on, say, the Berkeley campus. On an annual basis, the average student--what does it amount to? They would never separate the research appropriation from the teaching. They never had, because they always claimed they couldn't; how could they allocate the time of someone who was spending a proportion in research and who did carry a course or two? And things of that kind. Of course, under the constitution they have the full right to spend. You give them money, say earmarked to build a-- now I'm thinking of the next subject. I look out the window and I see the University of California hospital; I handled that. The buildings that are there now, for instance, the staffing and all of that.

Fry: The cyclotron.

Wollenberg: That was federal, grant money. And a lot of the University of California hospital was federal money. But you see, now, where do you allocate all of this federal money that comes into the university? If you give them money to build a barn at Davis and they decide not to, they can use that money--the regents can just transfer it all around. Now, that has advantages, it has great advantages, I recognize that. I'm all for the constitutional limitations, and I hope they're never lifted on the university as far as the control in the regents is concerned--for lots of reasons.

I think that the best illustration is how it'd be swinging all around right now, for example. You'd find a year or two of going 'way over in one direction, and then, boom! If they didn't have all those limitations on power in the regents, you'd elect a little different administration in Sacramento and the university'd be swinging the other way like a rocket.

Fry: Yes, this is what happens in other states.

Wollenberg: This is why California has the greatest of all, I think, universities. It's because of this control in the regents. But when it comes to working out, and sitting down, and getting the--I mean, this bothered Earl Warren to beat the band in the beginning of his administration.

Fry: Oh, it did?

Wollenberg: You bet it did. We had all kinds of meetings before he was inaugurated as governor, and it was determined right after the November election that I would be the next chairman of ways and means. We set up meetings in Sacramento; at that time his first director of finance was Jack Hassler, who was an Oakland banker. No, he had been a city manager in Oakland. He's dead now, I can't do anything there.

We used to go to Sacramento--The governor-elect's car would pick me up about six o'clock at home, then we'd go over to Vernon Street in Oakland and pick Warren up. Then on the way out through the hills where Hassler lived, we'd pick him up. We'd get up to Sacramento about nine o'clock, start meetings, and stay right there till five and six o'clock, in meetings on the budget--to make up Warren's budget.

Warren would come up personally to every meeting, and he'd meet every department head, and he'd have them--although the Olson administration had their budget all prepared, we went over the whole thing. And the crazy part of it was, he went over it with the intention he was going to save some money, and we came out with a bigger budget. We put more money in than Olson had given him in most things. He was convinced they needed it.

George Killion, who's around, by the way--I don't know whether he'd be much help or not. He's the recently retired president of the American President Lines. He was director of finance, a former Safeway lobbyist that Olson picked out. He's prior to Warren; Hassler followed him. He worked with us. He gave us an office and a staff, secretaries (and they were very lovely), and they set the governor up very comfortably up in the Department of Finance. Olson was still downstairs as governor after the election and before the inauguration. And we worked on the budget.

At that time we spent days on the university. We had Bob Sproul up there for days, and Lundberg who was then--he wasn't the comptroller (Jim Corley was the comptroller), but he was the finance man, head of the records and bookkeeping. We used

Wollenberg: to argue and fight and ask him to go back and get us figures on this and that and the other thing. Nobody ever felt that they satisfactorily were able to prove anything; there was always a feeling of dissatisfaction around. You had to go on good faith, which ultimately the legislature did too.

Just a sidelight story that I think is a wonderful story, the University of California budget was once held up for about a week in the assembly because a group of assemblymen, led by Ray Williamson, who were graduates of and interested in USF, University of San Francisco--have you heard this story? They held up that budget--because we needed I forget how many votes--until Bob Sproul came to Sacramento and brought--I'm trying to think who the football coach was. You know what they did? The budget was held up until they agreed to put USF on the schedule--on the football schedule. Yes, they put them on for a couple of years off in the future, put them on the schedule, and the budget went through. [laughter]

Fry: I suppose something like that could be done on far more urgent budget measures, too. If a group of assemblymen were disturbed over the amount of money being spent for--well, like today--black studies, they could hold it up that way.

Wollenberg: Sure.

Fry: Did that ever happen, do you remember?

Wollenberg: There was an attempt at it, but we ultimately got them together. I had a meeting up in my room at the Senator Hotel when we needed the money to finish up or to build another building out at the medical school. Smythe, I think, was dean then. Yank Chandler was dean of the Stanford Medical School, and there was a lot of pulling and hauling.

You see, we had trouble getting votes on these things because this was before UCLA had a medical school or anything down there. And the southern assemblymen, even Cal people--there weren't many out of the south who were in the legislature--would band together; they would balk unless they got something for the south. Nowadays, you know, the worm has turned, and the north has to go begging with hat in hand to get the south to do anything for them.

But the story I started to tell involved the appropriation for the medical school here when Yank Chandler came up. At that time, as today, they had the closed faculty system in the hospital--you know, the doctors have their own office in the hospital, they're completely connected, and only the faculty can put people in the hospital. Closed staff is what I'm talking about. Most hospitals are run that way.

Wollenberg: The Stanford people--even though they had a hospital here, it was small and they were not in good financial condition--came up and actually lobbied around to kill the appropriation for the University of California Hospital unless they would agree to open up the hospital on the basis of allowing a more liberal system. Because, they said, they lost so many patients. Their people would lose patients because the work that had to be done at the time, and this would be multiplied by the new building, would go to the California hospital, and the Stanford people would be excluded from any of the use. They really held that up for a while.

Fry: This Chandler, then, was from Palo Alto?

Wollenberg: No, the Stanford hospital was then in San Francisco. It's moved to Palo Alto since--the old buildings are the Presbyterian Hospital.

Fry: When you said Yank Chandler came up, I thought maybe you meant Chandler from the Los Angeles Times.

Wollenberg: No. Entirely different man.

Fry: They held up the bill, but it was passed?

Wollenberg: It was ultimately passed. The Stanford people withdrew their objection. Smythe agreed to sit down and work out something whereby he agreed that Cal had certain departments where they were unable to work, and that they would forget those cases--they'd hit a certain type of case in certain departments.

Fry: I see. Supplement each other.

Wollenberg: Yes. Stanford was looking for, and I tried to work out at that time, a contract system. We had an opinion from the attorney general that we could allow it without any trouble: the state could in certain cases help Stanford finance the hospital--they were anxious to keep it here at that time--by making a contract agreement that the state would pay so much toward patients who could not pay individually for work. The state would contract them to Stanford for the Stanford staff to work on, on a contract basis--so much per head in certain departments. And those things could be worked out.

Well, the University of California wouldn't go for it because they said they would, if they did that, have to set certain standards. The Stanford people said they would not want to work under the California standards; they had to have complete independence for their institution. You could agree with that as

Wollenberg: a general principle, but I tried to urge that they must have standards that were equal and should set up things they could agree on and do it. But they never did it--they never worked on it.

At that time I offered to put in a bill, after they would sit down and figure out how much money it would take and how many patients they contemplated to begin with in a modest amount, that Cal would contract with Stanford to take care of. This way we would save--because at that time Stanford hospital was in grave financial--the whole university was in grave financial condition. I even offered at that time to--if they wanted they could go into other departments, and contract for students--get a bill through to allow for contracting out. But you couldn't get anybody to sit down and do it. Which is all for the good, because Stanford's over its financial troubles and everything is fine. But at that time it was very serious.

Fry: Did the California Medical Association have anything to do with this?

Wollenberg: No, they weren't directly involved in this that I recall; it was the staffs of the two universities. But there was great friction in the two staffs at that time--great rivalry.

Fry: Do you remember if this was earlier than the health insurance bill?

Wollenberg: Yes, I think it was, because it was probably right off the bat in '43 that we started this university thing here--the appropriation to get the university going, and a couple of new buildings. Then we continued every session after that until it became its present size out there.

Fry: You said that this problem with the university budget, and the fact that it was never satisfactorily explained, was one that Earl Warren worried about.

Wollenberg: I think so, in the beginning, yes. Until he really--well, he didn't worry that there was anything wrong with the use of money or anything like that. That never bothered any of us. But the fact that the demands on the legislature would always grow and grow and grow in that way, and that the regents to a large extent--of course, he was a member of the regents. I wasn't, at any time. He could settle these fights in the regents so that eventually everything was satisfactory to Earl Warren, I'm sure. He always was a terrific supporter of the university. Still is today.

Fry: Yes. He is. But he didn't really go to regents' meetings until we had the loyalty oath problem.

Wollenberg: He didn't start at all to follow through with them, eh? I didn't realize that.

Fry: I guess the governor has to draw a line somewhere, because he's an ex officio member of an astronomical number of boards and commissions. Unless there is a real problem there, it probably doesn't get his personal attention.

Wollenberg: This is right. I guess that's true.

Presidential Campaigns of 1948 and 1952

Fry: One more thing. Your wife told me, while we were watching the jury the other night, that you did help out in presidential campaigns. Weren't you with Earl Warren on those?

Wollenberg: Yes.

Fry: And if so, which ones?

Wollenberg: The '48 and the '52 were the only ones I was really involved in, and Murray Draper was involved with me in those. We went to Philadelphia in '48, went a little early and set up a head-quarter office. It didn't amount to much, but we did set up the office. Then again in '52 in Chicago. Earl Warren himself didn't appear until usually the day before the convention opened. He came both times on a special train, with a delegation.

Fry: What areas in this big world of conventions would you want to talk about? Were you involved at all in the actual speech writing, or in trying to convince delegations--

Wollenberg: Not in speech writing. To a small extent in the second. Mainly to make appointments and make contacts through which appointments could be made. That's about all. Not as a convincing speaker on the subject.

Fry: So you were an appointment secretary?

Wollenberg: That's about what it would be in line with now, too.

Fry: Which was a key role; you had to screen people, right?

Wollenberg: Not to a great extent, although there was some screening involved in it, but only to keep the nuts out and things like that. And the world is full of them at meetings of this kind. I got as many people as possible to meet with him and see him and talk with him on the basis of getting people in who counted.

Fry: Can you talk about the vice president--

Wollenberg: In '52?

Fry: Yes. As the convention moved on and it became obvious that Warren might be the vice presidential candidate. Can you tell about that?

Wollenberg: In '48. Well, yes.

Fry: Not now, but I mean when we get to it. Should we include it on our outline?

Wollenberg: All right. That'll be fine.

Fry: And then '52--you were not on the campaign train then?

Wollenberg: No. I came out and met the train and rode maybe the last half or three-quarters of a day on the train back into Chicago. I'd been in Chicago and I flew out to Galesburg, I think it was, in the morning and joined the train there, with Murray Draper and Verne Scoggins, I guess. He was along.

Fry: Then on the '52 campaign train--

Wollenberg: Well, that is the '52 that I've just spoken of. In '48 I wasn't on--

Fry: Nixon forces joined it in Denver?

Wollenberg: Yes. I think that's right. Well, there wasn't really much "forces;" it was Nixon himself.

Fry: Just Nixon? [laughter]

Wollenberg: Yes. And he had certain delegates that he thought would switch over to him or do what his liking was. But all the delegates remained loyal to Warren all the way through. Really the crux and the change in that campaign came with the seating of the Texas and Tennessee delegates. There were rival delegations in both of those states, and the California members of the credentials committee voted to seat the Eisenhower delegates over the Taft delegates. That was four or five days before the convention.

- Fry: Were you there then, or were you on the train?
- Wollenberg: Yes. I was in Chicago then. The hearings were started four or five days before the convention; final decisions were made just at the opening of the convention. I guess it was one of the early orders of business at the convention.
- Fry: What do you think now about the outline--what have I left out?
- Wollenberg: I don't think there's anything really left out. I mean I think we've got it broad enough to cover--
- Fry: It's so general! [laughter]
- Wollenberg: Yes, it's general all right! But when we talk about the assembly and activities, what's happening and doing, and bills, I guess it really has to be general, except within the framework of the particular legislation. And we're not talking about that so much as the background.
- Fry: Yes. And I guess what's of interest to historians is how the different factions would stack up on each legislation, who were the more powerful ones, and how they operated, and things like this. And that'll probably come out in your stories.
- Wollenberg: Yes. I think so. The penal reform is a whole story within itself. The people who were opposing any reform at the time were mostly the so-called prison board that was a hold-over board and the wardens, to a large extent. They were afraid of their jobs, and so on. And people who had control. These bills were all occasioned by the so-called Sampsel case. He was a prisoner at Folsom who used to be seen spending his weekends around San Francisco--the Yacht Bandit, he was called. I don't know the details of his crime.
- Fry: But he became politically a very important figure--and legislatively! [laughter]
- Wollenberg: Correct! And he became the occasion for Earl Warren, who had a great ability for using an occasion as a jump off place to introduce or start off his reform of a department. This always assured having great public support when he undertook them.
- Fry: We'll want your story on that. That's a great story.
- Wollenberg: I think Judge Sweigert can tell it better than I can.
[end tape 4, side 1]

Childhood and Youth

[begin tape 4, side 2]

Fry: I wanted to pick up just a few things about your childhood at the Laguna Honda home that your father ran. You had a brother, right?

Wollenberg: Yes, I had a brother.

Fry: What were your interests as a little boy?

Wollenberg: I think I had just the natural interests of any little boy. It was more of a rural life than an urban life we lived, although we were in San Francisco. The so-called poor house or relief home, as it was known ultimately, was out in the west-of-Twin-Peaks area and in the middle of Sutro Forest, which then didn't have any homes in it. It was a real forest-- a eucalyptus forest but a forest nevertheless.

We had wildlife all around us, and we had horses because the nearest transportation to go downtown was about a mile and a half to two miles away. So you either went by horse and buggy or on horseback. I did because I had to get to school, and I always went on horseback to school. Even to high school, even to Lowell for my first two years, I rode on horseback. There was a livery stable about three or four blocks away where I used to keep my horse during the day. For activities after school, I used to go off on horseback, and things of that kind.

Fry: What activities?

Wollenberg: Athletic events, the things the school may have been involved in, generally things that a high-school person does in their after-school hours.

Fry: That's another thing I'm not sure of--what was available in terms of after-school recreation and things like this at that time. It would be kind of interesting from the viewpoint of social history to know what kids did! My impression is that they got to do a lot more things then, because they weren't always being organized.

Wollenberg: This is right. Yes. You had to be on your own resources an awful lot to find what you were going to do. There were formal organized things you could do: you could be active in the YMCA, busy at something like swimming or Y programs.

Wollenberg: Lowell High School had a very busy, active athletic program with all kinds of teams, with coaches even in those days; although maybe one coach would run all the things. The same man would be coaching football, basketball, baseball, and track, but with good results. We were city champions most of the time in all of these things. Swimming or tennis--oh yes.

Fry: Did you take part in any of the teams, or were you a spectator sportsman?

Wollenberg: No, I took part in some of the things. I don't think I was ever particularly good, but I was on the football team at Lowell.

In fact, last night they had a reunion of all Lowell people (and we went) who graduated before 1920. A lot of old folks were there--I'd say there were about a hundred there. They're raising money now to send the Lowell orchestra to Expo '70 in Japan; that was the occasion for the thing. They had a cocktail party and dinner together, those from 1920, and then went to the concert. I didn't go to the concert, but I went to the dinner. I hope to send the orchestra over.

Fry: What do you remember reading--magazines and things like this that were around your home? Do you remember any?

Wollenberg: We had a lot of magazines in the home, of course. But I can remember these were the days a boy read a lot of the so-called dime novels, and the Western books. We didn't have television, but we had Westerns--Zane Grey, and so on--a lot of that.

Fry: You just had the one brother; was he close enough to you for you to play with?

Wollenberg: Well, no. I really had two. I had my own brother who's still alive. Harold Wollenberg is between six and seven years younger than I am. Then I had--we used to always refer to him as our brother--Ralph, who was the boy I think I told you my father brought home from the refugee camps. He was a brother in the household.

Fry: Refugee from what?

Wollenberg: 1906 Earthquake camps. He was just a youngster then, maybe ten or twelve.

Fry: Why did your father bring him home?

- Wollenberg: He was around the camps and without parents, and I think when he found him he just brought him home because he didn't know where else to send him for a few days, and then he stayed there right along.
- Fry: So he was kind of a brother.
- Wollenberg: He was.
- Fry: But he was a lot older than you, is that right?
- Wollenberg: Oh, just about six years, I think.
- Fry: Well, that's a lot to a little boy. He probably looked like an adult to you.
- Wollenberg: Sure. That's right. And I think I was about six or seven when he came into the house.
- Fry: Well, we don't need to dwell on this too much, but I do like to be able to get kind of a picture painted of what the whole social area was like then. Did your family attend a synagogue?
- Wollenberg: Yes. My folks attended Temple Emanu-El, not with real regularity, but they were members.
- Fry: Did you go to Hebrew school?
- Wollenberg: No, I never studied Hebrew. I went to Sunday school for a very short period. This was a long way from way out to come downtown on Sutter Street where the Sunday school was. We used to drive down in a horse and buggy when we came down, and tie the horse up on the street, and go to Sunday school, and then go home. We used to play hookey a lot of the time, too, and not go.
- Fry: Did you have any ways of raising money then--some of the men I talked to had most ingenious ways of making their spending money.
- Wollenberg: I raised rabbits for a while. And I had an old man around the place who was my partner. We'd raise rabbits together.
- Fry: Oh, yes. You told me that.
- Wollenberg: We used to sell them out at Letterman, to the hospital, for experimental. We used to sell them to the University of California. And one time I kept for a doctor--what was his name? The head of a department at the University of California. He was experimenting with cats, and I took care of his cats. Oh, I must have had twenty cats in cages that I kept down in back of a barn out there.

Fry: What we're really interested in, I guess, is whether you remember the earliest time when you became aware of the issues with which your father was dealing? The social and political world around you.

Wollenberg: Oh, yes. It always seemed to me that in his busy years from then on there was always controversy, either with the board of supervisors, or with a city board or department, or something of that kind. He was always fighting for his institution-- administrative problems, and so on.

Fry: Did you ever go with him to board of supervisors hearings or things like that?

Wollenberg: Yes, I have. There were all sorts of things that were occurring. Then in the relief days we talked about, when he ran work projects and things of that kind, when he was handling relief in kind, you know--they were delivering baskets, groceries--oh, he had thousands of people on after the first depression.

I remember he said once they were figuring out who was on relief in those depression years in the thirties--early thirties after the '29 crash. At one time he was delivering baskets of relief to something like, I think it was, eighteen hundred lawyers' families who were hit that hard, that quickly. And he got great help out of them. When he had a job or a position open he'd always look for someone on the relief roll that he could take off and put in a salaried job of some kind. They developed lots of part-time jobs of this kind, and he used to use the lawyers a great deal in various things. [laughter]

Fry: Pretty well qualified labor, wasn't it? [laughter]

Wollenberg: He found them that way.

Fry: As a small boy, when you were ten to thirteen years of age, did you know what was going on and get yourself involved in the issues? Did he bother to explain them to you?

Wollenberg: Well, we used to know, because they used to be always talking about it. Our dinner table was always a hot place for conversation about what was happening in relief and anything around the house that he did. I wasn't involved in that I was doing anything, except that I had knowledge of what was going on.

Fry: What were your favorite courses in high school?

- Wollenberg: I suppose they're always somehow or other tied in with your favorite teachers, aren't they? I enjoyed, I remember, history. Not that I ever got any great, brilliant grades, because I used to be too busy--involved in the politics of the high school. I used to hold office in the high school and things of that kind.
- Fry: This was in the student government?
- Wollenberg: Yes, in student government and in athletics, and so on.
- Fry: What were some of the offices you held?
- Wollenberg: Oh, class representative, and on committees that came along on things, president of the senior class, and that kind of thing. I left and went over to the university before I graduated, about six months, in the middle of the year. So I never really finished high school. I went over because you could get into this naval thing that I was talking about.
- Fry: This was your World War I officer's training thing for the navy.
- Wollenberg: That's right, although it wasn't navy reserve. We were on active duty--we were all called in. Training is what it was. I was just eighteen and got right in. They took a kid of eighteen.
- Then I came back. There were about two or three of us went over there to this; some went into Army Officer Training out of this high school class. We came back for graduation. The board of education met specially and granted us diplomas, and gave us our college credits. The university accepted us because of our registration in this naval thing at the university. We didn't have to come up with credits; they accepted us because we were in that. I remember that because we were all in uniform.
- Fry: Was your dad upset when you left school before you finished?
- Wollenberg: No. I don't think so. I think in those days in the middle of the war he knew that if I didn't do something like that I was going to get into the army along the line.
- Fry: You'd just go and enlist as a doughboy?
- Wollenberg: Sure. Most of the young people I knew went into the army. After they became seventeen, everybody I knew was trying to figure out how to get in, not how they could stay out--in World War I, particularly.
- Fry: Times were different then! [laughter]

Wollenberg: That's right.

Fry: Well, that's a good place to stop. We can pick up your college career then at the next session.

Wollenberg: Okay. And that's rather dull anyway. [laughter]

Fry: I don't believe that.

[end tape 4, side 2; begin tape 5, side 1]

[Interview 4: 29 June 1973]

Shelley-Wollenberg Loan Shark Act, 1939

Wollenberg: You speak of the loan shark acts and the legal aid bill, and you point out that the record showed Albert J. Wollenberg. It should be C.; where the J came from I wouldn't know. It's a misprint somehow. I was the coauthor with Senator Jack Shelley of the so-called Legal Aid Society loan shark bill.

Fry: That's a significant act. It's pointed out as one of the few bills that the Olson administration succeeded in getting past the legislature.

Wollenberg: That's right. And it was a long, hard fight. As you've pointed out, Senator Ed Fletcher of San Diego and Assemblyman Gordon Garland from Woodlake had bills sponsored by people in the industry--the lenders who spent a great deal of money lobbying for their bills. The lenders bills were introduced primarily to muddy the water and compete against the Shelley-Wollenberg bills.

Their primary value was that they did set the maximum rate of interest for small loans in California and designated for the first time the regulatory agency. As I recall, the Division of Corporations was assigned the job of regulating and limiting the maximum amount, not only of interest but the maximum amount that could be loaned as a small loan broker to qualify as such.

Fry: Previously, in your career as the Assistant U.S. District Attorney, had you run across a number of usury problems?

Wollenberg: No, I really hadn't. How I happened to become an author of that bill--Earl Warren, the attorney general at the time, one day came to Sacramento, said he'd like to talk to me, sat down and explained the problem.

Wollenberg: I then was approached by members of the San Francisco Legal Aid Society (can't think of who the particular moving people were in that society), who discussed the great problem they were having in defending people against usurious and doubling charges. They had story after story that they could document.

The San Francisco Better Business Bureau had similar problems. They had copious files of complaints that they could do nothing about. They brought in their counterparts in Alameda County, who also had these problems and plenty in their files to document them.

I agreed, after the investigation, to sponsor the bills. The corporation commissioner, Mike Daugherty [Edwin M. Daugherty], had background and material on it as well, which he gave us.

These two groups, the Legal Aid Society and the Better Business Bureau, arranged with Professor Robert Stone, a professor at Boalt Hall, the University of California Law School, to do a survey and make a report. He did make a report and became the expert ultimately used as witness at the presentation before the committees of the legislature. Others were people directly from both Legal Aid and Better Business Bureau who brought the cases from their files enabling them to give factual statements.

The opposition was very heavy. There was a lot of entertaining of legislators by lobbyists--very heavy. It became a cause célèbre. I can remember one party at which the whole legislature was taken out to one of the country clubs up there to a terrific big banquet under the auspices of the loan companies. I was at the party.

The vote was very close and both bills passed--both the bill I was sponsoring and the bill that Garland was sponsoring. Governor Olson vetoed the Garland bill and signed the Shelley-Wollenberg bill.

Shelley had his own bill in the exact same wording as I had in the assembly. They both were passed and signed and became known as the Shelley-Wollenberg Act. They were duplicate bills. Which one became effective under the rules, I don't remember, but they both went into the statute books.

Fry: How curious.

Wollenberg: Yes, it was curious because we never did get together to combine the two ultimately. It made no difference, and Olson signed both.

California's Economy, 1939-1948

Economy Bloc; Concern with Welfare Abuses

- Fry: Was Garland one of the Democrats in that economy bloc?
- Wollenberg: Yes, Gordon Garland was speaker of the assembly for a while, as part of the economy bloc. He was a Democrat and was at one time director of motor vehicles, an appointment of Governor Warren.
- Fry: Was the main purpose of the economy bloc to oppose Olson, or did it represent a broad political--
- Wollenberg: No, the state was in very, very serious circumstances at the time. You see, the background was that the legislature had been made up primarily of the wave of public officials that had come in as a result of the Ham 'n Eggs movement and others in those Depression years. The state was in dire financial straits with no money in the state coffers to pay the bills. Payment of state employees was by warrants that the banks had agreed to accept.
- Fry: Why were they accepted by the banks?
- Wollenberg: You could hold them if you could finance yourself. They paid--I can't remember what the interest was on them, but they did pay something in interest. And furthermore, they were accepted primarily by the banks, regardless of the interest. I think the banks in California realized that if the whole government stopped, if public employees weren't paid, the banks wouldn't be open very long either. So the banks did accept them and paid out the money. This was done for a while.
- Fry: So you think the economy bloc really was concerned with state economy as we came out of the Depression?
- Wollenberg: I think so. The cost of state relief was getting so tremendous, with so many pressures and the beginning of excesses. There were accusations, lots of them proven, of abuses of relief. The economy bloc was a natural outgrowth of these demonstrated abuses. This was all part of it.

Joint Legislative Committee on Employment

- Fry: On that relief administration battle, which finally ended with the demise of Olson's relief administration--could you tell me more about the hospital bed statement that was given to you and Senator Phillips? You were chiefs of the Joint Legislative Committee on Employment.
- Wollenberg: Senator John Phillips, of Riverside County, and I were on that committee, and we had many complaints coming from the counties and the county directors of relief about state interference and abuses. These accusations were flying around, and I made a trip around the state and held hearings at that time. That was part of the relief picture.
- Fry: Apparently that statement you got from Finance Director John R. Richards on his hospital bed was the turning point in getting the hearings started--
- Wollenberg: And the production of witnesses, and so forth.
- Fry: --finally ending SRA, according to Bob Burke.* He doesn't say what information you gathered there. I thought maybe you would remember something about that. How did you happen to go to Richards's hospital room to talk to him?
- Wollenberg: Well, he was in the hospital in Sacramento. I didn't go. I think it was John Phillips who went to his hospital bed, but I didn't, as I remember.
- Fry: Burke writes that both you and Phillips went. But maybe only Phillips went, and then he gave a statement to you? Burke says [Sidney G.] Rubinow was there.
- Wollenberg: Yes, he was director, at one time, of the relief administration. He ultimately broke completely with Olson and the Olson people and testified as to the things he'd been asked to do and refused to do, and so forth. And then I think they put Cooley in. Or was he just before Rubinow? They were changing very rapidly. Walter Chambers was there for a while, but, yes, I think Cooley was after [Rubinow] too.

*Robert E. Burke, Olson's New Deal for California, University of California Press, Berkeley and Los Angeles, 1953.

Wollenberg: I remember a meeting at which Cooley was asking for an appropriation for relief and had prepared tremendous charts. He stood up and testified, and he had charted a ten-year period of relief. His charts had no termination, they just continued up, so he'd have had the entire population of California on relief in about seven years. That's how valid his presentation was.

And there were things of that kind. So, all of these things had to do with the creation of the so-called economy bloc. Now, there were lots of things that were done in the name of the economy bloc that shouldn't have been attributed to it--I can't think of a particular illustration right now--but they were pieces of legislation for what the title really meant--economy in government.

Yet, the first budget after Governor Warren came in (I was chairman of the Ways and Means Committee and presented Governor Warren's first budget) was larger than any budget Governor Olson had ever presented, and we successfully passed it. However, it was a two-year budget, as against a one-year budget today, and as I remember now, it didn't reach \$500 million.

Fry: It looks very small.

Wollenberg: Yes, from today looking back it's tremendously small, but at that time looking at it, it was tremendously large, because the state didn't have the required services that get the allocated funds now in the budget. You could do something about a great deal of it that you can't do today.

Fry: You came into the legislature in January '39?

Wollenberg: Yes.

Effect of War Years; State Finances and Budgeting

Fry: Then you were there as the economic picture changed, and the state began to get more revenue.

Wollenberg: Yes. Well, in the late thirties we didn't really get the increase in revenue that we reached with the big shot-in-the-arm during the war years. That's when the revenue started coming in; the sales tax began to produce millions and millions that the state couldn't spend.

Fry: Two and a half percent or something, a very low sales tax.

Wollenberg: That's right, a very low sales tax and very big revenue because of the effect of the war years on the state economy, as you know. California became a manufacturing, industrial state because war industries grew up everywhere on the West Coast, particularly California.

With all of that money coming in and with all the restrictions on spending it--you couldn't build new state buildings, you couldn't build institutions, you couldn't employ people to do lots of things. So the expenditures really went down rather than up because of restrictions caused by the war. As a result, there was a great surplus at that time, and we had the bill that froze that surplus.

Fry: Let me check this with you--the eventual reserve was approximately \$750 million, and business taxes and the sales tax also yielded a fantastic revenue, right?

Wollenberg: That's correct, it did.

Fry: And Earl Warren consolidated all state debts with a 7 percent bond issue? Do you remember that? I don't know whether that's the right figure or not.

Wollenberg: Well, yes, we consolidated the whole thing and paid a great deal of it off. There were outstanding bonds from the Modoc Indian War, whenever that was--the 1860s or '70s. There was an uprising of Indians in Modoc County, and California wanted the cavalry to come out and take care of it. The federal government agreed to send the army provided we paid for it, and California put out a bond issue to raise the money to support the army.

We paid the federal government to send the army, and we supported it with California money. Those bonds had never been paid back, and the people that owned them got their interest every year. They were 6 or 7 percent bonds, and they were perfectly good. In fact, they were traded a little bit on the bond market. People could always sell the Modoc Indian bonds. Things of that kind existed--bonds way back that far.

Governor Warren insisted that the outstanding bonds be put in one bond issue and paid off, those that legally could be paid off. And many of them were paid off.

Fry: My notes say that \$19 million was set aside to meet all the payments for the bond issues.

- Wollenberg: Well, that would probably be the interest, I don't know. There must have been more than \$19 million in bonds outstanding, although I don't think the Modoc Indian bonds were more than a handful. Compared to today, we talk in millions, and in those days it meant a whole lot.
- Fry: Yes, it did. We hadn't reached that \$1 billion mark for the state budget.
- Wollenberg: Oh no, not at all. And that was a two-year budget, and we were only at around \$400 million to \$500 million for two years.
- Fry: Well, tell me what you did with Warren on this question of state finance from the beginning. I have the impression that you started with him after he was elected governor. But maybe before he even took office he studied the budget. Is that right?
- Wollenberg: That's right. After the election in November of '42, just two or three weeks after the election, he used to go to Sacramento every day, and it was then determined by the man who was going to be speaker that I would be the chairman of the Assembly Ways and Means Committee. So Governor Warren invited me--every day we used to drive from here to Sacramento and spend the day in the capital, a regular commute, with his to-be director of finance, who was--not Jimmy Dean. He was the next one, the one before Dean who was an Oakland--city manager in Oakland.*
- Fry: We'll fill that in.
- Wollenberg: Anyway, he would go along. Governor Olson's director of finance was George Killion, who is still around and available to talk to. He'd be very interesting.
- Fry: We do have an interview with him.
- Wollenberg: Oh, you do. George Killion would meet with us, make available his office, his entire staff, everything we wanted to know. Governor Warren started hearings to prepare his own budget; we held budget hearings just as though he had already taken office. This was through the courtesy of Governor Olson and George Killion. Department heads--not Warren's department heads, but the then-department heads--would come over with their proposals. The department of finance, a very well run department, had worked out an allotment and prepared the necessary figures. And then we went ahead with the preparation of the budget.
- Fry: What was your impression of Warren at that time, as our incoming governor?

*Governor Warren's first director of finance was John Hassler.

- Wollenberg: He was very conscientious in the preparation of the budget. He realized the departments needed funds, they needed things. Many of the things they wanted and needed they couldn't get because of war restrictions, but he worked very diligently and hard on the preparation of his first budget. And his director of finance was learning something about the business and very seriously trying to determine what the state picture really was.
- Fry: Well, that legislature passed a tax reduction.
- Wollenberg: You couldn't spend the money, and it was coming in in great amounts.
- Fry: And then a sum was set aside as frozen too.
- Wollenberg: The so-called rainy day fund, as they called it.
- Fry: Now, you were in the hot seat for this move. There must have been people around who wanted to spend that money.
- Wollenberg: The cities and the counties were after the state for the money. They had a very hard political drive going for the monies. That's when the term "Christmas Tree Fund" was created. No, it was later.
- Fry: I think it started in '46, and finally the \$90 million was appropriated in 1947.
- Wollenberg: Yes, at the end of the war, that's right.
- Fry: But I was just wondering when you first had a tax-reduction program, what were the pressures on the Ways and Means Committee against it?
- Wollenberg: Against the tax reduction? I don't think they ever had anything seriously against it. Number one, relief had fallen until there was, you know--the relief administration was really out of business. It had gone off. Everybody had a job in the war who was able to have one. Warren had taken a great interest at that time--he thought it was a good time to build up the mental institutions, and so on. He had visited personally about every mental hospital in the state, and I visited many of them. And then when the legislature came into session, I took the Ways and Means Committee, and we visited all the mental hospitals in the north, and then a week or two later went south and visited them, looked at their condition and needs. Many of them were overcrowded, lacked adequate staff, and so on. Their budget was greatly increased in new services, and as soon as possible, a program of priorities set up so that as soon as you were able

- Wollenberg: to build and go into capital investments, it would be done. We set up a priority list of buildings and institutions, on which the mental hospitals were way at the top, the university was way up on it--
- Fry: Who set up the priority list?
- Wollenberg: A committee of the legislature, a joint committee, as I remember. There was the joint budget committee, which I was on. And maybe by that time we'd employed Rolland Vandegrift, the first legislative analyst. Alan Post is that now. And we worked on these priorities.
- Fry: Well, when you worked for Warren's bills, how did you do it?
- Wollenberg: Which bills?
- Fry: Well, any of them. The reason I'm asking a general question first is that in the newspapers of the day, you're always referred to as Warren's floor man--
- Wollenberg: Yes, they always did.
- Fry: --and I wondered how accurate this was.
- Wollenberg: That was not accurate in that I was never designated by Warren as his "floor man." Bills concerning finance and appropriations that Warren was interested in were usually brought to the Ways and Means Committee somewhere along the line, and most of the sponsorship came out of and from the Ways and Means Committee. Then it was determined I was author of many of them, not all of them, by any means. In the senate, of course, we'd have duplicate bills usually. This was mainly the way it was handled.
- Fry: Are you saying that the legislation on finance and appropriations and so forth generally came from the governor's office?
- Wollenberg: Yes, or the Department of Finance, which was really as close to the governor's office as you can get.
- Fry: Then, how did Warren work with the legislature? You were in the position, as head of the Ways and Means Committee, so that you would have been one of the key persons.
- Wollenberg: Well, we would present his bill, but a committee--if it were necessary the finance department would work up the figures, would tell the story, and carry the bill. And that's about all you can say. He did not work with the legislature in the sense that he called in legislators and asked them for votes or

- Wollenberg: made deals or anything like that. This was one thing he never did and always refused to. I don't think there's anyone who can say they ever got a deal out of Earl Warren when he was governor. You know--"I'll take care of your buddy on the Fair Board in Inyo County if you'll give me your vote." Nothing like that ever happened, I'm sure.
- Fry: I made a note once, I guess two years ago. It must have been during one of our lunches. You and Judge Sweigert said that when somebody was trying to make a deal you would refer him back and forth to each other, or something like that. I didn't quite understand this note after I wrote it down.
- Wollenberg: Oh, I might tell somebody to go down and see Judge Sweigert. He wasn't Judge Sweigert then, he was Bill Sweigert. But I don't think we ever really bounced anybody around.
- Fry: And he'd always refer them back to you?
- Wollenberg: Well, I never had anything to say about these things. I never made him a promise, and I was never told by Earl Warren that I was his floor leader or anything official. I don't believe he ever told anybody that I was. He never worked that way; he didn't believe in that. He did these things himself. So there never could have been a Watergate by the people around him. It would never have happened. They would never have been in a position to have pulled a Watergate--
- Fry: Because he knew everything, he was personally--?
- Wollenberg: Yes, sure, anything the administration was doing was his. Of course, it was small; it wasn't the great big world that we're in today.
- Fry: Were there some meetings occasionally which might have been called by legislators themselves, to meet with the governor and get his explanations?
- Wollenberg: Oh yes, there were many of those things. That went on all the time. I might ask through his secretary or something. "If the governor has time, I'd like to bring four or five legislators down who want to talk to him." It might have been about a tax bill, or an appropriation measure, or they thought there should be more money for something they were interested in. Those appointments were arranged, and they were always just strictly on the merits of "What did you think of this thing?" Not on "Look, you fellows do this, and I'll sign some bills," or "I won't let them die on the veto pad."

- Fry: It looks like the governor was in a position of great disadvantage because of the strength of the lobbyists, with whom Warren was continually warring.
- Wollenberg: Yes, he did, he warred with them, and I guess he had the same problems every governor has in that respect. They're there. It doesn't mean that they're all improper, you know. A good strong lobbyist representing some special interest can make a good case, too. I mean, they're not all improper lobbyists. But there were lobbyists that were strong. There was also in those days the liquor industry's Arthur Samish, not only limited to liquor but many other interests that Samish had taken care of. Have you read his book?
- Fry: [laughs] I almost wish I hadn't cluttered my mind with it. What little I already knew about him indicated he is unreliable--
- Wollenberg: Well, it throws light on his personality, whatever it's worth now.
- Fry: We wanted to interview him, but it's kind of at the bottom of our list, because he has written this book. We might yet. He's still around.
- Wollenberg: Oh, yes, very much, so I hear. I haven't seen or heard of him in years.

Earl Warren's Health Insurance Bill, 1945

- Fry: Well, would you like to tell me something about the medical insurance bill? This was one where you figured very strongly.
- Wollenberg: The so-called "health insurance bill," that's what they called it in those days--in 1945.
- Fry: AB800.
- Wollenberg: AB800, and then after that another one of the following session. Well, this came about through Earl Warren's personal interest in the thing. The first I had, really, any knowledge of it was in January, 1945, when I went down to the governor's office and sat in on and listened to a discussion with a group of doctors. There was Dr. Philip K. Gilman of San Francisco, who I believe was at that time president of CMA [California Medical Association]; I don't know whether Henshaw was there or not.
- Fry: Who?

- Wollenberg: A San Franciscan that was very active and had been active in the earlier days--'33 or something like that, when the bill was authored, he had authored--
- Fry: Was he a doctor in the CMA?
- Wollenberg: Yes, in the San Francisco--he'd been interested in health insurance at one time.
- Fry: John W. Cline?
- Wollenberg: No, he was later; he succeeded Gilman. Dr. Cline was president of the association during the time the fights were on in the legislature. He was a San Franciscan.
- Fry: Was he in your district?
- Wollenberg: They all were, yes.
- Fry: They all were? [laughing]
- Wollenberg: Their lobbyist used to tell me every day--he never let me forget it--that I had more doctors per capita than any other legislative district in the United States. I always used to say, "What difference does that make," you know. "So what. There are a lot of fine doctors in my district whom I'm in touch with and who tell me I'm doing all right. You don't speak for all of them."
- Fry: There was a man named Hartley Peart--
- Wollenberg: He was a San Francisco lawyer who was the counsel for the CMA for many, many years. His office continued on for many, many years representing the malpractice insurance companies and the medical association at the same time.
- Fry: Now, I'm really interested in this meeting because we've had a lot of conflicting stories about it.
- Wollenberg: Well, the meeting was a simple enough meeting. Whoever were present said they were going to take it down to the California Medical Association House of Delegates that was about to meet in Los Angeles.
- Fry: Yes, in January, 1945.
- Wollenberg: And this was shortly before that. I don't recall that there was any drafted bill. There was a lot of loose notes, and the most that was formalized was probably a memorandum that Bill Sweigert

Wollenberg: wrote on the subject. I don't think there was much more than that in existence at that time--a very loose thing. There was a man from Michigan who came originally from Stockton and was a professor of veterinary medicine--the head of medical economics at the Michigan medical school.

Fry: Nathan Sinai?

Wollenberg: Yes. I don't know that he was in it yet.

Fry: Beach Vasey, Earl Warren's legislative liaison, might have been there.

Wollenberg: Beach was there, but I thought Beach came later into that position; but he was there in the office for this meeting, yes. It was a very general discussion. There was nothing of a specific nature laid out, that I recall, of a program. They were talking in general terms that there must be free selection of a doctor by the patient; there must be freedom of a doctor to accept or reject cases. They tried to work something out other than a panel system.

Barbara Armstrong of the University of California law school already had a bill in, and she'd had one in years before. She had lined up with the--maybe the League of Women Voters group. They had some bills they were interested in and approved of in their system.

[end tape 5, side 1; begin tape 5, side 2]

Wollenberg: Where were we?

Fry: We were at this meeting at the end of December.

Wollenberg: Oh, yes. I don't mean to include Barbara Armstrong and the League of Women Voters. They were not at the meeting; this didn't concern them at all. I'm talking about the governor's bill.

It ended up that the doctors would take this general program to the house of delegates and present it to them. Cline may have been there, but I'm not sure. The doctors felt that everything was okay and more or less the right track of working something out. They understood the pressures on the economy and the general economics of the medical profession, and the need for something being worked out. They never got down or discussed, as I recall, the matter of details. And the result--that's the way it was left.

Wollenberg: They left, and the next thing that I knew anything about it, there were resolutions coming out of Los Angeles from the CMA House of Delegates calling Earl Warren a communist, and later on I was referred to as a communist leader, and so on, because of the interest in health insurance. These were things that came I guess from some of the more ardent, emotional, political doctors who were controlling the politics of the situation. And probably from the pen of Clem Whitaker, Sr., who was Warren's first paid publicity man at the time he beat Olson.

Fry: He got this account to fight health insurance?

Wollenberg: Yes, oh, he had several others too.

Fry: There's one other question about the meeting. I think it was the incoming president of the CMA who said that--

Wollenberg: It could be Cline; I don't know.

Fry: I'm not sure. It may have been Gilman. He said he understood that Warren agreed not to make public announcement of this bill until they had a chance to meet at the house of delegates. And Warren announced it before the house of delegates met. I wondered if you remembered anything about this?

Wollenberg: I don't remember this at all.

Fry: --whether there was agreement at the meetings on the date to announce?

Wollenberg: I don't believe there was ever any agreement. They were going down to do what could be done. I don't recall that anybody got down to saying, "Oh sure, we'll wait until we hear from you."

I remember my physician (I don't want to mention his name) here in San Francisco. Right around that time he was a member of the house of delegates. You know, this was during the war, and if you had a good doctor you treasured him and hung onto him. And he was taking care of my family. My children were very young at that time, and yet they were not in the hands of pediatricians.

I remember I got so damned mad one night. My son was sick; he had a high temperature, the boy did, an earache or something of that kind, and the doctor came. He was a fine person. I mean, this was a good doctor, too. He came in the house and said, "Here comes the Warren-Wollenberg health service," he yelled at the door. He said, "I'm sorry, I've got to give the boy a shot, but I can't afford to wipe the needle clean. It's going to be with a dirty needle." Or something like that.

Wollenberg: I remember I said, "God damn you, get out of this house if you can't come in without talking like that."

He was very apologetic, and he has told me how he fought, and how he voted, and how he made speeches against this whole thing.

And I said, "Well, if you believe I'm a communist, why do you render all this splendid medical service? I mean, you've confessed you're going to use dirty needles and so forth." We used to struggle with that for a long time.

Fry: Did it make any difference in your district vote?

Wollenberg: Not really, even though I was told by their lobbyist, Ben Read, that they were going to definitely oppose me. Cline told me one day in the debate we had for a Commonwealth Club section, at which he and I debated this thing--he told me--and Read had told me before--that was the "last free ride I would get in the legislature." Because I'd been up there about five sessions and never really had any opposition after the first. I used to go in with both parties and no problem.

Fry: Yes, I noticed that you went in as a Democrat too.

Wollenberg: Yes, everybody did in those days that was able to. And I had no problems in the district. Of course, I still think it's the best district in California to represent. It was in those days.

Fry: How do you mean?

Wollenberg: They used to kid me up in Sacramento and call it the last of the real "blue stocking" districts in California. In my day, people in the district, regardless of their affiliation, were awfully fair in their interests. If they thought you were up there calling the shots the way you saw them, honestly and not under sinister influences of any kind, they'd vote for you whether they agreed with you or not. [laughing] They might argue with you when you came home, but on the whole they were satisfied. They weren't looking for an antilabor man, they weren't looking for a pro- or antibusiness man. There were not those kinds of groups in the district.

For the most part, the voters were wonderful people. They were wonderful because they always elected me. [laughter] And even though the district had the greatest number of doctors, that's why I had great respect for the doctors at that time, even in the heat of this fight when they were calling names.

Wollenberg: The medical people would say to me, on the insurance thing, "You'll be punished and you'll have opposition, and we'll make this issue the whole campaign, and we'll beat you in the district."

I used to say, "That will be great, because then it's the people who've got the say. I don't want to stay in the legislature any longer than the people in the district want to elect me. When they're ready and finished with me, they'll beat me. I'll be finished, and maybe that will be better for me. But anyway, that'll be the end of that." That was my concept of the democratic process, and I thought that the people ought to have the right to speak. "But," I said, "you fellows got to remember one thing: the issue of the campaign will be health insurance, because I'll take it out to the people. I'll take it out on the people. I'll take it out on the arguments, and we'll really go to the mat on it. Now, if you people (these doctors) want to show up somewhere every night and debate me on this thing, it'll be great. That will be a swell idea, if you want to bring this issue to that kind of a head before the electorate. I don't believe you've got the guts to do it. I think you know deep down--and if you talk to Whitaker, I think he'll tell you to take it easy--you haven't got that kind of support. Stick with beating it in the legislature. Don't take it to the people. That's the advice I would give you if I were your counsel. And so, just go ahead, put somebody in, and we'll see what happens."

This was before the votes on health insurance up there in the legislature. So, every time I'd see them I'd say, "Well, this is the last roll call. When are you going to get started? I want to go home and go to work on you guys." And they didn't do it.

Fry: I wondered why your side didn't take it to the people. Because Warren threatened to do that at one time too.

Wollenberg: Yes, that's right.

Fry: Why wasn't it put on a referendum or initiative?

Wollenberg: I can only answer that this way: Although I've never sat down or attended a meeting where it was discussed whether to do it or not, I don't think we had any organized--this was the sad part of the whole thing. There was no organized prose on health insurance at that time. This was a Warren idea, and his bill was the bill that we worked hard on. The CIO had a bill of its own and would not support the Warren measure. And Barbara Armstrong had something that she wanted and was very critical of the Warren measure as not being a true health insurance bill, and so on. So we didn't have any--I mean, the only support he

Wollenberg: he might have gotten would have been, say, to get the CIO to support him on it. And in those days they were noisy but not a real political factor in the state.

Fry: They were rather small.

Wollenberg: Very small. Not a true political factor. They had a research department and some bright people who did some work, but they weren't a real factor in California.

So, I don't know that there was any organized support for health insurance. The League of Women Voters, for what they could do, would have said a kindly word on health insurance. They wouldn't have been negative. But they were not organized to carry a campaign forward on it. And I just guess that's it. That's what I have to say.

Fry: Were there any attempts made to get the leaders of these diverse bills together to hammer out one compromise bill that everyone could get behind? Do you remember any attempts in that direction?

Wollenberg: Yes, there were. We used to hold some meetings, and one group would want the English system, with no substitute of any kind for it, and so on. We were very specific.

It just occurred to me that what the doctors present at the meeting with Warren were very happy about and approved was the Warren bill, although it had certain public members, also had medical people on the governing board. And the director of the system was to be a doctor. There were to be medical people on the governing board who would set the rules, and so on.

Fry: You mean Warren proposed this in December at that meeting in 1944?

Wollenberg: As early as December. He said, "What can really happen?" We put the director of public health of the state on as a regular member, and the CMA people were to have representative doctors on the board. It was to be pretty much a medical majority, as I recall it.

The lay and public people would have been much in the minority on it. They were mainly in because they would come from the people interested in unemployment insurance and in the deductions because it became part of it. A cent and a half or something was added, whatever the amount was, on the unemployment insurance tax. That's where it was to come from.

Fry: What seemed to have been cause for most alarm was whether payment to doctors should be made per capita by the--

Wollenberg: By a panel or a flat salary sort of a thing. Whether it should be per patient on his rolls, and how he could get people on the roll, and how he would lose them and all of this. That's right. These were administrative hangups, and that was their argument: that unless the doctors through their official organizations are going to come in and cooperate--

Certainly we had the ingenuity to work out a system. And this was the thing we wanted and thought so important, to have a good representative board that would write the rules and regulations. That was one of the important things.

Now, all of the relief, all of the medical benefits that were in that bill--and this shows how limited it really was as a health insurance bill--all of the benefits were adopted within three sessions of the legislature. Within six years or so, practically all were adopted piecemeal into state law.

Fry: Workmen's compensation did a lot.

Wollenberg: Well, we had workmen's compensation. No, all they did with that was to raise--

Fry: I mean, some of this was put into workmen's compensation, wasn't it?

Wollenberg: The medical benefits and reimbursement and sick benefits were put into the unemployment insurance programs. Yes, it was comparable to [putting] workmen's compensation into the unemployment insurance program, right. That was the pattern for it, and that did a lot. Then the allowing and the encouragement of private insurance plans, that did a lot. Because, you know, suddenly they were selling valuable private insurance plans. Among others Blue Cross came into existence, which hadn't been before that. These are the things that were encouraged. These are the things we hoped for--that if employees could get better health insurance privately they would buy it privately and be exempt from the public tax. So, you could get a Blue Cross program, for instance, in an industry, that could be in lieu of the other, not on top of the other.

Fry: That was another issue--

Wollenberg: That's an important issue.

Fry: --whether the government insurance would be compulsory.

- Wollenberg: Yes, it's just exactly like the optional items of workmen's compensation, as you say. You can insure privately for it, or you can insure for it through other methods.
- Fry: Was it your opinion at the end of that December meeting that the doctors were going to go along with this?
- Wollenberg: Yes. They were going to let the governor know. That was the point. Now, that's where the interpretation may have come in, you know, that then the governor wasn't going to do anything. But nothing expressly was said, nor did I have any impression that the governor was just going to stand still until he heard from them. That might mean the legislative session would be over, and they were going to say, "We haven't done anything yet. You were going to wait." But I don't think that ever occurred. At least I have no recollection of it.
- Fry: Next time I'd like to get your story of handling health insurance on the floor of the assembly, because there's some good--
- Wollenberg: Have you ever interviewed Bill Sweigert? You ought to have the two of us, because we can job each other's memory very well.
- Fry: Oh yes, why don't we have a joint session, a committee of the whole.
- Wollenberg: [laughter] Something of that kind. That might be good.
- Fry: And you can talk about your committee of the whole, then.
- Wollenberg: Yes, that was going on. The main opposition was the cross-examination of--what's his name again?
- Fry: Oh, Nathan Sinai?
- Wollenberg: Nathan Sinai, because he was nationally known and had written a couple of books. He had run a project on health insurance up in Canada for, I think, Manitoba, and had been at the University of Michigan. He was the one man in the country that knew anything about health insurance. He had studied the English system and had written on it.

His degree was that of a veterinary scientist from the University of California at Davis--he was a Stockton boy. And he had spent all of his time in medical economics, which fascinated him, and this is what he did.

The main attack on his was--"Look what they bring here, look what they want to give the people of California--they bring nothing but a horse doctor. This man is a horse doctor." That was the business there. But they were great days.

Fry: We can start there if you want to, then, next time.

Wollenberg: All right, fine. [discussion about outline]

Fry: Oh, I have a small question here. Do you have a copy of the health insurance hearings* and the report of that interim study committee? The university doesn't have any in their documents library.

Wollenberg: I wonder if Sweigert would have that. I can check and see, but I don't think I have them.

Okay, very good, Mrs. Fry. I'm sorry we have to cut this one off.

[end tape 5, side 2][second half of tape 5, side 2, and side 1 of tape 6 recorded on 2 July 1973, a joint interview with Judge Wollenberg & William T. Sweigert, still in process when this volume completed]

College Years and Early Law Career

[Interview 5: 16 July 1973]
[begin tape 7, side 1]

Fry: Don't be modest.

Wollenberg: I went to the University of California and received an A.B. degree in 1922 and a J.D. degree in 1924 from law school.

Fry: In Berkeley?

Wollenberg: In Berkeley, at Boalt Hall. It was the only law school other than Hastings; there were no others then.

Fry: Were you ever in student politics in college?

Wollenberg: Not really, not in student politics in college. As to activities, I used to fool around the gymnasium in the athletics a little bit.

Fry: Which athletics were you in?

Wollenberg: Well, I had been a rugby player in high school; I played rugby over at the University a little bit. I went out for football. The coach was Andy Smith. After a couple of days, he called

*See appendix for partial transcript.

Wollenberg: a few of the rugby players over to one side, and he said, "You fellows want to do something for this football team, go turn in your uniforms." That was the extent of my football.

Fry: We have a lot of stories of how Andy Smith handled his stars, but I think that's the first one we've collected on how he called them out. [laughter] When you were an undergraduate, what were your main interests in courses?

Wollenberg: The crazy part of it all is that when I went over there, I registered pre-med.

Fry: Oh, you did? You were pre-med?

Wollenberg: Yes. It was during the war, and I hadn't finished high school yet. I was accepted in the naval reserve unit; it was different than the ROTC naval unit would be. It was a reserve unit. I immediately went into the naval training courses. (That's my World War I activities, because I had registered for the draft earlier that year--I was 18.)

Then I was accepted at the university, as were several others in my class from Lowell High School in San Francisco. At the end of the high school term, they granted us our graduation certificates and the university accepted us without adding up the grades for what were called recommendation courses in those days. The university accepted us all, since we were registered at the university prior to our graduation, and we continued right on there.

Fry: How long did you continue as a pre-med student?

Wollenberg: I don't think it made much difference; I just didn't continue with the required pre-med courses because I had been in the naval unit, you see, and I stayed with some of those courses for a while. In those days you had to get a junior certificate, or something, in the sophomore year. By that time I hadn't the courses that qualified for pre-med anymore; so I had actually become an L&S student. Then I aimed for the law school.

Fry: What got you interested in law?

Wollenberg: I suppose it really was my first interest all the time. My father had been a public official in San Francisco, and I was connected with a household very interested in politics and what was going on. Many friends of the family were lawyers. It was sort of a natural step for me to become interested in law.

- Wollenberg: Although, I had an aunt who was a physician. I think it was her influence to a large extent--my first interest in medicine had sort of arisen through that.
- Fry: How unusual--to have a woman doctor in those years.
- Wollenberg: She was one of the early University of California Medical School women graduates.
- Fry: What was her name?
- Wollenberg: Judell. Malvina Judell. Then she had studied in Europe. After studying here, she'd gone to Vienna for a few years. She practiced here in San Francisco.
- Fry: Is that your mother's sister?
- Wollenberg: Yes.
- Fry: What an auspicious family! [laughter]
- Wollenberg: I remember as a boy--She had a horse and buggy and made calls at night, you know. I can remember she'd come wake me up in the middle of the night and ask me to hitch up the horse and buggy while she got dressed. She was going out on a call. I'd go back and get her old horse out of the barn and hitch him up and she'd go off on her thing. Sometimes I'd drive her. I'd go with her and sit in the buggy while she made a call--things like that.
- Maybe that's what ultimately scared me away from being a doctor, because doctors really made calls in those days--any hour of the day or night. They wouldn't just say, "Take some aspirin and see me at two o'clock."
- Fry: Did you think you might go into politics when you began to study law?
- Wollenberg: I don't think I had really planned to go into politics in any way at all, no. I really don't. I think that it was just--When I determined to run for the legislature, it was rather a quick decision made at a time when I was just receptive to it. I had not been active in any organized politics up to that time.
- Fry: When you did get out of law school, what did you do at first?
- Wollenberg: I took a position in a downtown law office, and I was there for about a year, that's all. I left that and went to an association with another gentleman, an older man, for a few years. Then I was on my own, and then I ran for the legislature.

Fry: What were the early law offices you were in?

Wollenberg: The first office was with a gentleman--Leon E. Morris, and then with A.B. Weiler. They were just general practice offices.

Fry: Did you get any court experience?

Wollenberg: A little bit. Nothing particularly of an important nature, but I did have a beginning.

Fry: Then did you go into the United States Attorney District Office?

Wollenberg: In the United States Attorney's Office for this district.

Fry: What was your job there?

Wollenberg: I was an assistant to the United States attorney. I started working on civil cases as well as the criminal calendar. I became a courtroom deputy, which meant that I tried a good many cases. I was assigned to Judge St. Sure's court and worked as a prosecutor in his court for about three or four years.

Fry: Was this the period when you first had contact with Earl Warren?

Wollenberg: Really, my first contact with Earl Warren came about--My father was a very close friend of Earl Warren, through Masonry and through public affairs. He had been a visitor in our home and visited my father there; I met him and knew him in that way.

I suppose a real, closer contact came later when I was also active in Masonic affairs, and he was also. I also knew him through the American Legion, things of that kind. I can give you something, maybe. I don't know why I'm keeping it.
[looking through papers]

Fry: At any rate, he was a family friend at first.

Wollenberg: Yes, a good family friend. [still looking] I hope I still have it; maybe I gave it away. This is a picture taken on the roof of the Whitcomb Hotel of an organization known as the Veterans' League. It was mainly American Legion people and Republicans.

Fry: Was it political?

Wollenberg: Yes, purely political.

Fry: Are you in here too? [looking at picture]

Wollenberg: Yes. I'm here. And there's Earl Warren. That's George Hatfield (Senator Hatfield later; he was United States attorney then), Judge Traverso, Ray Robinson (an attorney from the Modesto-Merced area), Walter Dold, Talant Tubbs (who was a United States Senator at one time).

Fry: Was that an effective organization?

Wollenberg: It was quite effective among veterans who pretty much came from northern California. I think that's Tony Monterey, who was a political writer on the Oakland Tribune.

Fry: This was one of their annual meetings?

Wollenberg: I don't know whether it was annual or what. I don't recall if it was a regular affair. That's the roof of the Whitcomb Hotel. [laughter]

Fry: Was this in the twenties?

Wollenberg: This was the mayor of Oakland. I'm sure that Buron Fitts must be there, who was district attorney of Los Angeles County.

Fry: I see two blacks there. I wonder who they are.

Wollenberg: One is Cappy Ahlberg. He may even be around yet. I don't know his name; Cappy would know them all. There were about five or six of them who used to come up. They were veterans and in the Legion.

Fry: How long did this organization last?

Wollenberg: My contact with it didn't last much beyond this period. I don't remember having much contact after that.

Fry: Was it just in the Bay Area?

Wollenberg: This group was mostly Bay Area, although some men would come from down in the Valley and down as far as the Monterey area. A northern California group, I guess would be a better way to put it.

Fry: What would it do in elections?

Wollenberg: Like any other political group, it would work for candidates.

Fry: It could actually back candidates?

Wollenberg: Yes. This group could.

Fry: Did it raise funds?

Wollenberg: I don't recall that it raised funds.

Fry: Was it a special interest group for veterans' measures primarily?

Wollenberg: No, it was pretty general in its interests. It appealed to veterans, of course, because it did take an interest in veterans' things as well.

Fry: Hang on to that picture; we'd like to deposit it.

Wollenberg: The thing is, we should find out just who all the people are.

Fry: Right. You could name those you know. That's a real scoop; we don't have a picture of that group.

Wollenberg: There's Earl Warren.

Earl Warren, District Attorney of Alameda County

Fry: In your U.S. attorney's work, did you have any negotiations, or any cases to work on, in conjunction with the district attorney's office in Alameda County where Warren was?

Wollenberg: There were cases, but they were prosecutions not necessarily tied in with him personally.

Fry: I wondered if you had been able to become familiar with the type of office he ran.

Wollenberg: Well, to some extent. My observation of the office over there was that there was a--What was the name of the committee that investigated crime in the twenties in this country?

Mabel Walker Willebrandt was employed, and she made a written report, a big, fat report of law enforcement in the United States. You know, these were the "roaring twenties"; there was much shooting going on, but it wasn't crazy, wild-eyed individuals in those days. It was more organized crime, I guess.

Wollenberg: She said that the best, most efficient, and most able law enforcement officer in the United States was the district attorney of Alameda County, Earl Warren. She reported that to Congress after her investigation.

Fry: Is that where that statement is? So many people have tried to pin that down.

Wollenberg: Mabel Walker Willebrandt made that statement in a written report to the Congress. It's filed and must be in the Library of Congress under the title of the committee. What's the name of the committee or the name of the chairman, the man who made the investigations? Was he a senator? I think so.

Fry: This was a Congressional committee?

Wollenberg: It could have been a committee appointed by the president, who would have been Coolidge, I guess. It might have even been Harding, but I think it was Coolidge.

Fry: Warren didn't become district attorney until '25, so it could have been Harding. Well, that gives us a lead anyway. In fact, Earl Warren himself was trying to find that quote for his book. We looked through so many books written in that period and couldn't find it.

Wollenberg: I remember telling Warren Olney where to hunt for it.

Fry: Oh, I wonder if he found it.

Wollenberg: I remember telling Warren Olney where I thought he'd find it. I could be wrong, but I think I'm right. The quote came from Mabel Walker Willebrandt, and she included it in her report.

She was the "angel of the dries" during Prohibition. Then she became attorney for the grape industry. These wine bricks that you used to put in a thing--I remember she represented them.

She was an assistant in the attorney general's office in Washington. When she left the government, I think she worked for or had something to do with some wine institute--not the institute but some wine production.

Fry: Wine bricks, did you say? Was this a Prohibition way to make instant wine? [laughter]

Wollenberg: Yes. I don't know how instant it was, but you bought the brick, which was dried and pressed grapes. You put them in a barrel of something--I guess water; I never did one--and eventually you got wine.

Fry: Why did she do that if she was a "dry?" [laughter]

Wollenberg: I don't know; I think that's what happened.

Fry: Maybe that's why she was a dry. [laughter]

Wollenberg: It was when she was working in the attorney general's office that I think she was a very vigorous prosecutor on Prohibition. And she was very high up in the hierarchy in the attorney general's office.

Then she was employed by this committee to make that investigation. Darn it, I can't think of the name of the committee.

Fry: Warren Olney may have dug this up.

Wollenberg: He may have. I made the statement just a few years ago. We were at a dinner that the old associates of Earl Warren gave when he was out here once; we gave it at the Earl Warren Center. I said a few words, and I made the quote. Everybody jumped me.

Warren came up to me after then and said, "You know, that's been quoted but nobody can find it. Where did you see it?"

I said, "I just told you; it was Mabel Walker Willebrandt who said it." Then I knew the name of the commission. It bears this man's name.

Fry: I'll be able to find that, I think.

Wollenberg: From Mabel Walker Willebrandt. Her report must be laying in the library in Berkeley somewhere. It was the report made in the twenties.

Fry: We've been on the Raymond Moley track. Moley was quoted as writing the same thing.*

*"...I declare without hesitation that Warren was the best District Attorney in the United States." Raymond Moley. 27 Masters of Politics--in a Personal Perspective (Published for Newsweek by Funk & Wagnalls Co., N.Y., 1949).

Wollenberg: He was so many years later than Mabel Walker Willebrandt, he may have quoted it. In those days she was a very well-known national woman.

Fry: The other question in my notes is on the Ku Klux Klan and Earl Warren. Do you know anything about that?

Wollenberg: I remember that he had a prosecution. There were a couple of Klan meetings in Alameda County, and I think they ran a raid at one time--somewhere in the hills off Foothill Boulevard. They brought in a lot of people, and I think Earl Warren prosecuted them and got them out of the county; he was directly involved as district attorney and went after them very vigorously.

Then there were the trials of that road contractor over there.

Fry: Yes, the street contracting scandals.

Wollenberg: Yes. Of course, there was the famous ship murder that had a lot of attention. Then he sent the sheriff to the penitentiary.

Fry: Oh, Sheriff Burton F. Becker, the thorn in his side.

Wollenberg: Yes. Then they put in Mayor Michael B. Driver as sheriff. He was a kind, old gentleman.

Fry: I wondered what sort of person he was. Isn't he the one who wore the moustache?

Wollenberg: Yes. He came from Berkeley, where he'd been mayor for a long time. They were having an awful time finding anyone to be sheriff of Oakland at that time. He had, I think, a good reputation.

Fry: Was he a father figure?

Wollenberg: He may have been. I don't know much about it from the inside; I just recall.

Fry: When you were in the district attorney's office, were you there at the same time as Roger Kent?

Wollenberg: No.

Fry: George Hatfield?

Wollenberg: George Hatfield was a United States attorney.

Fry: Did you get fairly well acquainted with him then, in a way that helped you later in the legislature?

Wollenberg: You mean with Hatfield? Oh yes, I was very close to him. He appointed me. I knew George quite well. We didn't have any problems in the legislature.

Fry: Oh you didn't? I thought you might have had some problems--

Wollenberg: In labor?

Fry: Yes.

Wollenberg: I didn't necessarily vote with him, but I mean we always understood each other. We were very good friends, just as he was with Oliver Carter. Oliver Carter will tell you that, other than his father, George Hatfield means so much to him he almost gets tears in his eyes.

Fry: He was a real mentor, wasn't he?

Wollenberg: Yes, sure.

Fry: Did he have this role with you?

Wollenberg: No, apparently not the same as Carter's role with him. I had been with him for a number of years, you see, at the U.S. attorney's office. We were good friends and on a very good basis, but sort of an understanding basis, with each other. He didn't guide me, as a father figure sort of idea, as he very much did with Oliver Carter.

Fry: I thought when you were trying to put through the highway bill that Hatfield opposed it.

Wollenberg: No, no. Hatfield was very helpful and worked hard to get that bill. He was for that bill. He sort of master-minded the politics and the moves in the senate. That story, of course, can come best from Carter. Hatfield wasn't what you'd call an intimate of the governor on everything, but he was very supportive of Earl Warren on many, many issues. He opposed him, I guess, on many, many issues, but not vigorously and openly. He may have voted against Warren's bills, but I think to a large degree they were very understanding of each other.

Fry: Did he oppose him mainly on labor issues?

Wollenberg: Mainly labor issues, I guess you'd say, yes.

Fry: Did he fight the health insurance bill?

Wollenberg: I don't recall that he fought it and took any lead or position. He probably voted against it, but I don't recall his being one of those actively fighting the bill.

Fry: Are we leaving out anything in your autobiography between the U.S. attorney's office (1934) and the time you became a legislator (1939)?

Wollenberg: Not really. It was a period during which most of the time I was engaged in private practice.

Fry: Were you allowed then to be in private practice and also handle U.S. attorney's work during the 1928 to '34 period?

Wollenberg: Yes, but I didn't have much. We could take cases that weren't in any possible conflict with our U.S. Department of Justice work, but I had very little business. You know, those were Depression days we were getting into.

Fry: You weren't really bothered by your private practice. [laughter]

Wollenberg: Not really bothered by it is right. I think I received the munificent sum of about \$333.33--I can remember that was the check every month, and I was one of the high-paid members. This was from the United States attorney's office. As I remember, the United States attorney himself only got about \$6,000 or \$7,000 a year. The United States district judge got about \$8,000, somewhere in that neighborhood.

Fry: Were you married then?

Wollenberg: Yes. You could live on it very well, too.

Fry: You could buy steak for :30¢ a pound.

Wollenberg: Sure.

Fry: When were you married?

Wollenberg: Nineteen twenty-five.

Fry: I don't know anything about your wife. Did she go to Cal?

Wollenberg: Yes, she went to Cal.

Fry: Maybe we ought to put her name in the record.

Wollenberg: Velma Bercovich.

Fry: Was she a San Francisco girl?

Wollenberg: She was born in San Jose.

Fry: Did you two meet at Berkeley?

Wollenberg: No. Actually, her family moved to San Francisco when she came here to high school; we met in high school.

Fry: You had known each other quite a long time when you married.

Wollenberg: Since high school.

Fry: Did she work?

Wollenberg: She's worked hard all her life. [laughter]

Fry: What did she major in in college?

Wollenberg: I think she was a social welfare major--took all of Barbara (Nachtrieb in those days) Armstrong's courses before Professor Armstrong went over to the law school.

Fry: She must have had many pleasant, long conversations with your father.

Wollenberg: Yes. She knew him. She used to get a kick out of it when some classes would visit the institutions in San Francisco, take field trips, and see my father about this and that, interview him on things.

Fry: Did you ever have to make a decision on whether you were a Republican or Democrat?

Wollenberg: No. I just came up in a Republican family and I've always been. Never changed registration or even thought of it. But I've never been a real party man in any--I'm not going to tell you how I voted; it's going on the record so I won't. [laughter]

Fry: Okay. But you can put in the record that you haven't always voted Republican but you are a Republican.

Wollenberg: Right.

Fry: Unlike a lot of your other colleagues in the legislature, who have switched back and forth from party to party in California, you never did, did you?

Wollenberg: I've never done that. I never had a district that even--You know, I was elected as a Republican in landslide elections when no other Republicans were elected around the area. I would be elected.

Fry: Because you were a Republican?

Wollenberg: I don't know. I just was a candidate. I don't say because I was a Republican.

Fry: From what you and Judge Sweigert were saying the other day, I thought maybe it was because you were in your district and you were Al Wollenberg. [laughter]

Wollenberg: All of these things are factors.

Wollenberg Elected to State Legislature, 1939

Fry: How did you decide to go into the legislature?

Wollenberg: Well, there was a vacancy; an incumbent wasn't running. He was trying to pick somebody to run, and a few people resented that. They asked me if I'd run. I said, "Well, let me think about it; it might be fun." Sort of in that manner. And it ended up that I ran. I got in very late, just before the filing date; the campaign had been hot and going on for a couple of months already. I had to get busy and work hard and intensely for awhile.

Fry: Did your district have a little higher-than-average income? Did you have any problems raising funds?

Wollenberg: We didn't have to raise so much, you know. Expenses didn't really amount to much. The campaigns were within reason--quite, quite. I knew very little about my campaign funding, but I know that we spent very little. I eventually went over the list of donors and filed the statement that was still required at the time.

Fry: So this wasn't a problem. The people who usually helped out in campaigns--you know, the Steinharts and so forth--did they help out in other legislative campaigns, like yours?

Wollenberg: What do you mean help out? You mean financially?

Fry: Financially.

Wollenberg: Personally, I don't think they spent much in anybody's campaign, actually, as far as money went. They contributed a reasonable amount or they worked on finance committees, perhaps. Mr. Steinhart, that's all, there was just one person. You don't have to say plural--just Jesse H. Steinhart. He was the only one.

Joe Feigenbaum was a partner in that office. He had been in the legislature before, from 1927 to 1933.

Fry: Was Ward Mailliard one of these who helped get the kitty together?

Wollenberg: For the governor or maybe for the general Republican committee, but he didn't do anything in my campaign that I know of. I met Mailliard after.

Mainly, I had a group of family friends whom I'd known. I don't think they'd ever had anything to do with politics. They were just friends and they got busy.

Fry: The names I have mostly come from discussions on the governor's campaign.

Wollenberg: No, I was not connected with that group to any extent. I remember one little story. We wanted one or two billboards; I think we got three or four, no more than that. We just wanted them because we thought we ought to have them up there somewhere. Foster and Kleiser had them all tied up, of course, and we couldn't get any. They just turned us down cold.

I'd gone to high school and everything else with one of the Bransten boys--that's MJB coffee. I knew there were MJB boards around in those days--a lot of them. I remember I called him up and went down and said, "Joe, how about it? Would you release a couple of billboards? Foster and Kleiser won't give me anything. You own them in your contract and you've got the power."

"Sure. Which ones and how many?"

I said that I wanted one--I couldn't afford to do the printing and put up the billboard for too many.

He said, "Sure. I'll call up Foster and Kleiser and tell them to post three or four boards." Something like that--five boards--whatever it was. And I got a few billboards. That was only for about two or three weeks, that was all. Then, I think I paid to re-post them with the MJB ad that was taken off to put mine up. He loaned me the boards.

- Wollenberg: But it was like that. I never had to state I'd buy any coffee; I never had any problems. They never again heard me ask for anything. [laughter] I mean, it was because of a long friendship; that was all.
- Fry: Did you cross-file?
- Wollenberg: Oh yes, I cross-filed. In those days we also had the Progressive Party; Hiram Johnson's old party was still around, and I filed in the three parties.
- Fry: How many did you win in the primary?
- Wollenberg: I won the Republican and Progressive, [laughter] and had a runoff.
- Fry: You had a runoff with the Democratic candidate? Do you remember who that was?
- Wollenberg: George Harris. Judge Harris.
- Fry: After that, did you have any very tough races?
- Wollenberg: Not really. I don't think I ever had opposition after that except--oh I think the Communist party filed somebody once. Other than that, I don't think I ever had an opponent. They sort of gave it up as hopeless--the district, you know; not me but the district.
- Fry: You were so much a natural there, I can see why. Do you want to go on now and pick up those particular bills that we haven't talked about yet--the mental health and public health investigations and bills?
- Wollenberg: I guess by mental health you mean the department in general--the buildings, the construction, the setting up and getting appropriations for staffing and so forth.
- Fry: That's right. There was quite a bit of dissatisfaction with the mental hospitals.
- Wollenberg: Oh yes. It was one of the first things Earl Warren did, to go around and visit them. He came away just all upset about the whole business; it was just a mess. Nothing had been done for years. The old buildings had been built way before the turn of the century. There were fourth floor garrets with beds jammed in wherever you could put a bed, and people all over the place.

Wollenberg: Immediately he set to work on a budget for construction, and so on.

Fry: Did you go with him on that inspection tour?

Chairman, Assembly Ways and Means Committee, 1943-1947

Wollenberg: I can remember being at one or two with him. I think I was in Stockton with him, but I don't remember any others. I went on my own after that. When I became chairman of the Ways and Means Committee, we'd charter the bus every session, and I'd take the Ways and Means Committee by bus to the northern California hospitals--go out on a three or four days visiting trip. Then a month or two later, we'd get a bus out of Los Angeles and make a trip to the southern hospitals.

We did that every year. That made a great effect. It made it so easy to get support by just getting them to go to the institutions to see conditions. We used to get appropriations and build institutions.

Fry: Did this committee then make a formal report?
[end tape 7, side 1; begin tape 7, side 2]

Appropriations for State Institutions

Wollenberg: This was the Ways and Means Committee working on appropriation bills, and the function would be to report bills out and pass them in the legislature. We didn't file any investigative reports, no.

Fry: No big thick documents that we should run and look up?

Wollenberg: No.

Fry: What were your main reforms besides the actual hospital buildings themselves? Was there a concern for different administrative structure?

Wollenberg: Well, yes. Staff--we wanted more medical or psychiatric staff, more psychiatric workers, or more attention to what might be done.

Fry: Wasn't there an attempt to get more local out-patient psychotherapy clinics?

Wollenberg: Yes. Sure. That was another thing--to get local clinics. They did establish a few; I don't know how many.

Fry: How did your committee feel about that?

Wollenberg: I think we ultimately appropriated the money for some, for the start of it. This was just a matter of timing. In the beginning, in the Olson administration, there was an attempt to get local clinics. I wasn't on any committee then and didn't have anything to do with it.

Then when Warren came in, in the institutions and the general mental health picture there was a direct attempt to pick it up as much as possible, through the University of California Langley Porter Clinic as the center of it. You see, the university (medical school) had something to do with that. It was a joint thing for many years between the Department of Mental Hygiene, as they called it, and the university. They did establish some clinics; I don't know how many or just where.

Fry: How did you try to offset the county medical associations' opposition to these local clinics?

Wollenberg: Well, we put them into the population areas; I don't know that we ever got many of them out around the state, but in the cities. The medical associations did not strenuously object as long as the centers were strictly mental health, and strictly if they were jointly under the mental hygiene department and under the university, as Langley Porter's past history has been.

One of the big problems was the University of California Hospital appropriation to put up a new building started out here; that wasn't Langley Porter, but it was one of the problems we had at that time.

The appropriation for the university finally got through. The opposition from the medical association was that it was a closed hospital, that only university staff doctors could get patients in; nobody else could use it. They wanted it opened up for the use of anybody.

Assemblyman Albert C.
Wollenberg, Sr.
ca. 1940s



Judge Albert C.
Wollenberg, Sr.
ca. 1979

Wollenberg: They objected to the university doctors having offices and office hours in the hospital, instead of being on the outside and referring patients in. That is, the staff was allowed that--always has been; I guess they still have.

Fry: Warren says in his book manuscript--and I guess he told us this too when he talked to us--that this whole program of local out-patient centers, that would be staffed with psychiatrists and psychiatric aides, was slowed down considerably by the local county medical associations.

Wollenberg: I guess it was. You see, the work of the Ways and Means Committee was appropriations, and we did get through some appropriations to establish the clinics. We were not involved in any way in the administrative end of it; that would have been his chief executive or his department heads, you see.

Fry: I thought maybe you heard from the doctors' lobby frequently during those days.

Wollenberg: Sure, they were trying to oppose appropriations of any kind. But we did pretty well, you know; we got it off the ground. That's what we were working on, and I think we did achieve that primarily because we used to take these trips. Legislators couldn't resist--we always invited their wives. When the committee went, we got a big bus, and we'd have the wives and legislators, and we'd start out a tour of northern California.

We'd make reservations at nice places to stay around, too. That had a great effect. By the time they came home, their wives were screaming about the conditions at the hospitals, and they were too. We'd go through in a big group. We'd take the ladies through the hospitals and to all our meetings and everything. We worked that out and did a darn good job.

Fry: So that's how you did it. The doctors' lobby was so well-organized, and became even better organized when the health insurance question came up, I wonderered how this had gotten through so well.

Wollenberg: The whole thing went through very well, I think. It may not have been as much as it should have been, and it was slowed up--there's no question. But we did get it on the way.

Fry: In that big hospital construction program--not the UC mental hospital but general hospital construction program--

- Wollenberg: Of course, we never had any, except for mental hospitals and then the university appropriation bill. The state didn't operate any general hospital construction programs. We didn't have a program for subsidy or--you know--like the Short-Doyle Act or anything like that.
- Fry: Was that after your time?
- Wollenberg: Yes, that came later.
- Fry: I was thinking of the federal Hill-Burton Act, in which ultimately hospitals would be financed a third by the state, a third by local funds, and a third by the federal government.
- Wollenberg: Yes, that's right. That all came later than my time.
- Fry: I see. And the setting up of the hospital districts within the state--was that yours?
- Wollenberg: We may have had the original district bill go through at that time, but there was never any movement on it. I mean, we set the districts and the administration thing--set it up, but it was all later that it was funded.
- Fry: Were you there when the Department of Public Health was moved to Berkeley?
- Wollenberg: Gee, I don't recall, but I think it was just around the time I was there; it was still in Sacramento for most of the time. I know you can get the whole history of this from Lawrence Arnstein.
- Fry: Yes, we did. Even before our Earl Warren project started. Well, I'm about to go on to another item on the corrections reform bill.

Penal Reform

- Wollenberg: Of course, that started early. We had the first youth authority setup under the Olson administration. Then the general corrections reform came early in Warren's administration. That was kicked off by an incident that gave great impetus; the timing was great.

Sampsell, the yacht bandit, was found coming down every week and spending the weekend with his girl friend here, and so on--getting furloughed out. That immediately kicked off a complete prison corrections reform business.

Fry: Did you have anything to do with the Deuel Committee and its investigation?

Wollenberg: No, other than it was underway and going ahead; I was not part of Deuel Committee.

Fry: There's one thing that needs to be cleared up in the way the bill moved through the legislature. Apparently, there had been a lot of sacred cows--

Wollenberg: Yes. There were loads of them.

Fry: --in the way the correction institutions were set up at that time. What were these and how did this develop opposition?

Wollenberg: The wardens of the various penitentiaries had their own little domains over which they had complete control; there was no real statewide administration.

They had power in those domains of purchasing and everything else that goes with the administration of the prison. They fought like the devil for their jobs and control.

Then there were, of course, influences that always wanted a finger in to favoritisms, and that was all there, very strong.

Fry: You mean inside the prisons?

Wollenberg: Inside and also from the outside in the setup of the old parole board and its political setup. You could reach in and get a prisoner out if you had the right people do it, and so on.

It was conducive to that sort of thing in the nature of its setup, as against the present prison system, as complicated as it is. Of course, like everything else, the prison system is so much bigger and the problems so much heavier than it was in those days. You have to realize that.

Fry: Yes. We haven't been able to find a record of any prison riots; were there any, do you remember?

Wollenberg: I don't think there were any serious things, nothing that you'd call a prison riot. Once in a while you'd have a little break-out, but it would only involve a few people. It wasn't what we call a prison riot today.

Fry: Did the warden try to block passage of the prison reform bill?

- Wollenberg: Oh yes. I can remember that Clinton Duffy spent days up there lobbying against the whole thing, in opposition to it from beginning to end. Sure. He fought it and fought it. He was a very influential person in those days.
- Fry: He had a public following?
- Wollenberg: Yes. He had a public following. Clinton Duffy was considered to be one of the great penologists of the country.
- Fry: In the mental hospitals, which also had a certain degree of local autonomy before the reorganization, did you have this same problem?
- Wollenberg: Yes, but to a lesser degree, I guess. Theirs was more local in their--
- Fry: County?
- Wollenberg: I guess so. Even as early as that time, the counties were sending any and everybody to a state institution rather than try to support them, especially elderly people.
- Fry: That reminds me of one other thing. I believe the method of admitting a mental patient was changed. Did you have anything to do with that?
- Wollenberg: I think that was changed much later. They put in it you have to have a hearing within ten days, or something, if someone demanded it--a court hearing. Other than that, I don't think there was any radical change.
- Fry: The method at that time was handled similar to criminal cases. Is that right?
- Wollenberg: Yes, that's right.
- Fry: What about patronage? Was there patronage in the mental hospitals and in the prisons that legislators could use, before the reform?
- Wollenberg: There may have been. I think they always had a problem really finding attendants to work in the mental hospitals. Not that they had to go out and find people, because usually attendants were ex-patients and things like that. They had a terrible problem there. I guess it still exists to a certain extent.

- Wollenberg: Patronage in the higher jobs? I suppose there was always some pressures of that nature, but I've never had any experience with it.
- Fry: I thought maybe that also had given some weight to this sacred cow.
- Wollenberg: I'm sure it did. That was what I was really talking about, the patronage and the power of the wardens and what the people on the outside could do through the warden. Wardens were pretty powerful people, and the superintendents of the hospitals were too. Sure, that would be patronage.
- Fry: We have a copy of the Deuel Committee report, and when I saw how big that report was, I thought, "What does this really have to do with the passage of the bill?" Did the senators and the assemblymen really read it?
- Wollenberg: Not necessarily. I doubt very much whether any of them ever read it through. I think, however, it would scare them to death to think, "I wonder what he's got in those pages." [laughter]
- Fry: That's true, too. What's he got on me, you mean. Actually, wasn't there a little summary or something?
- Wollenberg: Oh yes. There was a good deal of briefing.
- Fry: Something like that is terribly important to academicians in criminology who are tracing the development of the prison system in California. I guess I was skeptical of the effect it really did have on legislation.
- Wollenberg: I think that the big impetus was the yacht bandit and the press; they just harped on that. The governor encouraged them and encouraged them and made all kinds of--Anybody would make a nice statement about the yacht bandits.
- Fry: Was that when he called the special session?
- Wollenberg: Yes, I think we did have one, in June, 1943.
- Fry: It was a special session, but I wasn't sure when that was called.
- Wollenberg: When that broke, he knew his timing perfectly and he called the session right after that.

The Collier-Burns Highway Act of 1947

Fry: There's a story on the freeway gas tax battle that we don't have on record. It was just amended to pieces at one point; then, the next morning, what did you do?

Wollenberg: Well, what happened there was that the bill that I was handling in the assembly--Mike Burns's bill--got amended to death. 'I mean it just didn't have anything in it that would set up any kind of a highway system, particularly the gas tax features and the truckers. Everybody got just what they wanted; you can imagine what a mess it was--I can't give you the details now.

I said definitely I would not ask for passage of such a bill but I would ask them to defeat such a bill. The first reaction was, "Well, let's pass it. Then the senate will get it and they'll amend it back to what it should be."

I said, "No, I'm not going to vote for it so I'm not going to ask that it be passed in that form." I asked for the defeat of the bill and it was defeated and that was it. Then they moved the senate bill out of the senate into the assembly, and we stayed with that and passed it in its proper form, which became the bill.

Fry: Wasn't there some kind of a conference with Earl Warren?

Wollenberg: There was a general meeting in the governor's office. He thought that maybe the tactic would be to go ahead and pass it and that would do something. I said no I wouldn't do it. George Hatfield said I was right, I remember, to do it the other way. Anyway, so they all said "You're right; go ahead."

I said, "Well, have someone else handle it then; I personally will vote against it so don't let me handle it--I don't mind."

Fry: Do you have any special stories that you could tell about the struggle in the assembly with the truckers' lobby?

Wollenberg: You see, there were so many amendments, so many features in the bill that each one was subject to some amendment of some kind. It took a lot of debate and a lot of holding of votes together to keep the thing as a whole in a manageable condition.

There were all kinds of switches back and forth. But for the most part, we did it. We just squeezed it through, but it got through all right. It took an awful lot of moving people from different positions, and ultimately it was done.

- Fry: I thought Samish was involved in the trucking lobby; if so, wouldn't he have been involved with working against the highway bill?
- Wollenberg: Yes. I thought he was involved in it too, but I have no specific recollection of just what, where, and how and in what manner it happened. I know he did nothing to assist the highway bill; I think he was laying back. The oil people, of course, wouldn't have anything to do with it. He may have been mad about that; I don't know.
- I think he was connected with some trucking interests, but I couldn't tell you who or what they were.
- Fry: This was about the same time that the oil companies were concerned with the tidelands oil being given to the state for a revenue, and I wondered if you remembered any trades in that respect, or was that a legislative matter at all?
- Wollenberg: No, I don't think we had it in the legislature as such; I don't recall it. We had the original oil bills, but that was control of gallonage, and that's a different story. We had those earlier, during the Olson administration.
- Fry: Oh, the drilling regulations.
- Wollenberg: Yes. Drilling regulations. I don't know what else I can say about the highway bill.
- Fry: You and other supporters had a great many meetings during the days that the highway bill was coming to fruition.
- Wollenberg: Oh yés. It took many days between committees and on the floor, and there would have to be conferences between different people from time to time.
- Fry: Keeping your friends lined up and getting others, too?
- Wollenberg: Yes, that's right.
- Fry: The other day you and Judge Carter mentioned some of the men who were against it. What were their objections to a highway system and gasoline tax?
- Wollenberg: It's very hard for me to understand the exact objections. They came from the oil companies or the truckers who were going to pay more taxes on a gallonage basis. Some of them were going

Wollenberg: to; some of them didn't have to pay any more. There were the different classes of truckers, all of whom had separate organizations and had their friends in the legislature, and all of whom were fighting somebody else. It was all right with them if somebody else picked up the tab for it--they'd like to see the highway construction.

It was rather an interesting opposition because it made all the difference and turned this state into just a state of wheels, I guess. We'd have been better off without it, but we wouldn't have grown with it. Maybe we would have kept our railroads running. I don't know.

Fry: But that didn't become very clear until just a few years ago.

Wollenberg: That's right. It didn't become clear nor was that offered as anything at that time.

Fry: What I can't really understand is why the oil companies didn't see that better highways would sell enormous quantities of gasoline.

Wollenberg: Well, I guess they did. I guess, though, that they felt they had to object to the tax on their product, and that they thought that increased cost might somehow or other force the development of some other means of transportation--I don't know. It wasn't very clear, thorough thinking, nor were their arguments ever presented in any way, except to say, like any automobile club: "We need the automobile, and the oil industry carries the highest taxes of this type and that type," and they wanted to cut taxes down, down, down. It was all right if they raised prices, but not taxes.

Fry: Did they ever submit a counter-proposal for funding highways and getting highways built?

Wollenberg: Yes. They submitted the toll system; they wanted you to pay, and they were successful in many states. If you tour the East, you know that in states like Pennsylvania, New Jersey, New York, you come to a gate and you drop your money in. This was the thing that the governor said he would not stand for in California.

Of course, here the revenue comes out of the pockets of everybody who's driving around, whether he uses those fast highways or not. Their argument for toll roads was, "Well, there are always the county roads and the small roads. Someone touring who doesn't want to pay can take the longer and

Wollenberg: narrower road, not as well kept up, and take a free ride on it. You're not cutting it off. Those who want to use the expressways pay for it." The trucker would pay for it on a weight basis as he goes over the scales on the highway.

That was the alternative offer, yes.

Fry: It looks like that would have been very appealing to a number of legislators, especially since the eastern precedent was so well known.

Wollenberg: Well, when you took the rates and looked at what it was all about (we did have the example of our bridges as the existing system--we're not entirely pure here)--it was offered as a means of revenue. So, that would have been the alternative. It did happen in many places; many states have toll highways. Yet, these same states still have the gasoline taxes, and they're just as high as ours.

There is that factor in it, that it doesn't in the long run save the public any money because the toll roads take generations to pay off; there has to be a bonded indebtedness when built. And it's not healthy for the economy or the states' obligations. Bonded indebtedness can't just go on and on.

But it might have been a little different in that the highways would have been a sort of pay-as-you-go proposition. You only build what can run on an economic basis. Therefore, you don't develop new areas and you don't get into new areas in order to develop them as rapidly as they should perhaps be developed.

We were really, I guess, honestly preparing for the big population that came, which wouldn't have had the room to move around.

Fry: There's been a lot of objections to the power that the State Department of Highways has.

Wollenberg: Yes. There's always that--statewide against the local community. In those days, the big cry from the little cities was that their merchants would dry up unless the highway went down the main street. Nobody would stop and buy gas, nobody would stop and buy lunch, or anything else. Going around the cities would kill and dry up the cities, which has not proven true.

Now, they all want to get the highway out of the main street. It doesn't do the city any good; they want it to go

Wollenberg: around. People come off the highway and go on the approach road if they want something and go in and get it in the city, because the business areas have to be back off on the approach roads.

Fry: Was the power of the Department of Highways an issue in this bill, then?

Wollenberg: Yes, but of course it didn't--

Fry: --have much legislative control?

Wollenberg: Yes. The department had control; they had previously granted the highways--I remember I had a bill at that time which gave the department even more power--you know, to cut out a city and go around it if they wanted to do it, and so on. This all was for speed in transportation. But the cities all wanted the money anyway to build the street themselves; it was just a question of who was going to do it.

The state, I think, still does a more efficient job when it goes around a city than when the city routes it down the main street and uses the funds just to fill up chuck holes as they develop and takes you down a street full of stop lights and all--you haven't got a freeway.

Fry: I thought there was a constitutional problem with the Department of Highways so that it did not have the same executive--It wasn't like the other departments in the hierarchy. Wasn't there something special?

Wollenberg: Yes, I think so. The people voted. Under our constitution, I think they're given certain overall rights and control of allocation of funds set up in that--the division of gas tax monies.

Fry: Could you in your Ways and Means Committee make specific line appropriations to the highway department? Was that permitted?

Wollenberg: Well no. That was all in the gas tax, you see; that's where that's controlled.

Fry: Then later in the state budget, gas tax funds went directly to the highway department, and the location and routing of the freeways then was not a legislative matter but a department matter?

Wollenberg: That's right.

Fry: Was this ever a criticism?

Wollenberg: Yes, sure. Legislators and local people wanted to say where the highway should be routed. The argument was that this was statewide, and if you were going from here to Los Angeles, every little town and village on the way couldn't tell you which way you had to go circling around.

When I started going to the legislature, we used to drive to Sacramento. It took a good three hours in the beginning because we used to have to go around the section lines--you know the old section lines. You'd go up and you'd come to right angle turns to go around Farmer Jones's field, then another right angle turn down a way, wander along a creek and over a bridge--it took a long time to get to Sacramento on the old road. [laughter] You went down Vacaville's main street and around the other way.

Fry: The reason this came to my attention--this problem of this very powerful administrative decision-making on the part of the department--was later on, when it tried to lay freeways through some of the state parks and through the redwoods, it was very difficult for a governor or the legislature, apparently, to do anything about the route they had laid down. Is that your understanding?

Wollenberg: I don't know; I have no knowledge of that at all.

Fry: Well, that's all I have to ask you about on the freeway battle, unless you can think of something else.

Wollenberg: I can't think of anything else.

Fry: You must be getting hungry.

Speaker of Assembly Contest, 1947

Wollenberg: You must be too. Shall we go get a sandwich and come back? This "speaker race of '47"--what did you have in mind?

Fry: I can show you what I have on it. Here it is. Right there. [looks at notes]

Wollenberg: No, I don't agree with the statement that Warren wanted either Wollenberg or Field. He may have been satisfied with Wollenberg or Field, but he never would take a position in this thing. I

Wollenberg: know I went south to see what I could do. I spent three weeks traveling around visiting legislators before the session in the hopes of seeing whether I could get any support. Everybody was nice to me, but I couldn't get any support. I never had any Warren support in what I was attempting to do--never; he would not in any way take a position.

Fry: Who was the other man?

Wollenberg: C. Don Field? Well, I doubt whether Warren would have wanted C. Don Field. I just doubt it. He was a fellow who was in the trucking-hauling business himself--he was against the highway bills that we've been talking about. Don Field was a big, burly guy out of Los Angeles. Have you ever heard of the Field Act concerning the construction of schools? Earthquake standards?

Fry: Yes.

Wollenberg: He's author of the Field Act, maybe the one thing he did.

Fry: What was the date on this speaker race?

Wollenberg: You have 1947. I left the legislature in '47. It could have been for the session in January. That's about the time it was, yes.

Fry: Who was the man who became speaker of the assembly?

Wollenberg: Sam Collins. He was later indicted and was acquitted after trial.

Fry: Was he pretty powerful? Is that an indication of his power in the legislature at that time?

Wollenberg: I don't know whether Sam had too much power; he was pretty well handled and controlled by various lobbies. He had been a congressman, before he came to the legislature, from Orange County. He was what they say about him.

Warren never indicated. You could have said he would have been very happy with Wollenberg or Field, I guess. That's what he's saying in the book.* But I don't think that Warren ever

*Richard B. Harvey, Earl Warren, Governor of California, Exposition Press, New York, 1969.

Wollenberg: indicated to anybody what he wanted. By that time, he was in a pretty fine position statewide to have done something and just didn't do it. I thought he was; maybe he wasn't.

Fry: You thought he was in a fine position to have done something?

Wollenberg: Yes.

Fry: Did you talk to Warren about possibly supporting you?

Wollenberg: I had talked to him, yes. He encouraged me to go out and see what I could do, but that was the extent of it. "God bless you; go out and see if you can do it." But I never had any support from him. [laughter]

Fry: Did you have any other speaker races?

Wollenberg: No. I never tried for it, in the sense that I didn't enter and withdraw early; I didn't ever announce. I went down and talked to a lot of people. In January, 1947, the Los Angeles Times told me they had every reason to want me and support me and all of that, but they had to get somebody from the south, somebody out of Los Angeles; that was the only thing.

[end tape 7, side 2]

State Campaigns of 1946

[begin tape 8, side 1]

Fry: Do you want now to go back to 1946?

Wollenberg: That gubernatorial campaign out here?

Fry: Yes.

Wollenberg: Well, that was the year Warren ran against Bob Kenny and won at the primary.

Fry: I guess you had a campaign of your own that year, but weren't you fairly active in Warren's?

Wollenberg: Well, I don't know why I was as free as I was, but I was. I worked in his campaign at one time, and it must have been that I didn't have any opposition.

Fry: At least not in the primary.

Wollenberg: Not at all. I didn't have any. Murray Draper and I were co-chairmen setting up committees around here and all of northern California. We organized Warren's own committees in every county. We did not let the Republican county committees handle the campaign; we did our own committees. We even got the endorsements of some Democratic committees.

Fry: How did that work? [laughter] If you got the endorsement of a Democratic committee, then did you have all the Republicans and the people in the Republican committee mad at you?

Wollenberg: They weren't mad, but we needed people who were enthusiastic Warren people as such, and that was the nature of the way we set the campaign up. We had our own campaign committees for Earl Warren in every county, and in lots of them we also dealt with the Republican committee; some of their members would be on the Warren committee.

Sometimes we'd have prominent Democrats on the committee as well, because you see there was cross-filing, and we were after Democratic votes on the Democratic ticket as well. That's the way it was set up and run.

Fry: Were you in on some of the earlier sessions on this campaign, particularly when it was decided to go for broke in the primary and try to win both primaries?

Wollenberg: No. Actually that was never decided. Warren always objected to making a statement that he could win both primaries. I mean he didn't like that idea that much. But the way we were organized, we were headed for that and did it.

Of course, he had friends all over, then. He had friends in both parties, he had labor friends, a lot of business friends, and a lot of farmer friends in agricultural counties who were for him. It was foolish to go out and say that we only wanted Republicans to vote for us. We wanted everybody to vote for us, and everybody did.

Fry: I thought maybe you had to decide whether or not to save some election funds for the runoff, and therefore you had to--

Wollenberg: No, I don't think that primary campaign could have cost--It probably cost less than any other campaign that he'd ever run. I couldn't tell you now how much or where; I don't think I ever knew the totals. But there was very little money spent in that campaign. There was nothing to spend it on in any great amount--a little radio. We didn't have television.

Fry: I guess the biggest costs were transportation, is that right?

Wollenberg: Yes, but you could get in your car and ride on these fine highways we've been talking about.

Fry: [laughter] Not yet.

Wollenberg: No, not yet, but the transportation wasn't that much of a problem.

Fry: In financing it, there were other, hotter campaigns, I suppose--like the one between Knowland and Will Rogers, Jr.

Wollenberg: Yes. Will Rogers, Jr. really flopped miserably. See, Knowland had organized just the other way. Knowland had used all the Republican county committees and all the Republican organization. After the primary, when you totaled up all the votes and took a good look at them, it looked like a terrifically hot, vicious fight between him and Will Rogers, Jr. for the general election.

So, the Knowland people were legitimately a little frightened. We had closed the whole Warren shebang--closed up the campaign, written the thank-you letters that had to be written, and closed up everything around the state. Then Murray Draper and I were asked to re-organize the Knowland campaign.

We got out our old lists, got into our automobiles, rode the highways around, and re-organized the Warren committees, almost on the same basis that they had been. We brought in the Democrats; it took a little argument, a little discussion, but they all came in fine.

Fry: How did Knowland feel about that?

Wollenberg: Well, this was the final election. He'd better feel all right because if he didn't get those votes, he wasn't going to get elected. Those were the votes he needed. We reorganized these committees pretty well throughout the state, even to the extent of going into the south--Murray and I did in the Knowland campaign--to get organized.

Fry: Who asked you to do this for Knowland?

Wollenberg: It was after the primary was all over, and Earl Warren asked us to do it.

Fry: Oh he did?

Wollenberg: Yes.

Fry: What did you think about Kenny early in the primary? Did you expect a tough battle with Kenny at first?

Wollenberg: I don't know that anybody really did. Kenny was the attorney general when he was running, and he had not been antagonistic. He had assisted Earl Warren, I think, at every turn he could as attorney general. He was a very friendly attorney general to the governor.

He didn't make a very vigorous campaign. It wasn't on account of money; he just didn't, himself, get out and do anything. He just didn't make much of a campaign.

Fry: Did he feel he was vulnerable?

Wollenberg: No, I don't know about that, but what he thought was that he could get the party nomination. I mean, he may have been holding back for a final campaign. I don't think he dreamt that he would be cut off at the primary. I really don't think so.

I think he underestimated Earl Warren's popularity with the people of the state. I think that he was probably at the height of his popularity with the people of California during that campaign. [refreshments brought in]

Fry: Warren had just been through his health insurance battle at this point. Did that give you any noisy opposition from the doctors you had to deal with in the campaign?

Wollenberg: No, not really, I don't think so.

Fry: Did you try to talk to the doctors?

Wollenberg: That came when Werdel headed a delegation supported by all ultra-conservative factions in the Republican party.

Fry: That's '52.

Wollenberg: Yes. And when they were beaten, at that time, I think that was what you'd speak of as the attempt really to oppose Warren then by that right side of the Republican party. [more refreshments brought by Steve] But that was the 1952 period.

Fry: In 1946 was your main task just feather-smoothing and hand-holding and trying to keep the Democratic and Republican factions together behind Warren, out in the counties?

Wollenberg: No, that wasn't hard; we didn't have any problems there. They were all friends of Warren; they were loyal to Warren. The Warren campaign as such, in 1946, never had any problems of revolt or threats of breaking anything up. I don't think we ever had that.

Fry: I guess I did wonder about Knight's efforts early in this campaign because he had rounded up support from some county Republican committees for himself for governor--

Wollenberg: I know, but in '46--

Fry: Then he backed out.

Wollenberg: Yes. I imagine that was all taken care of in Los Angeles somehow; I never heard of that problem.

Fry: Did you use polls?

Wollenberg: There were polls, but I don't think we did much with polls--very little.

Fry: I wish we could talk to Jesse Steinhart about this campaign, but since it is too late, I thought you could--

Wollenberg: I don't know that he'd be too helpful. I don't know whether he knew a great deal, except the campaign had its problems. It always had money problems. Ward Mailliard, I guess, was handling that one. He would find means to pay our bills, always. But they weren't much, compared to today's.

The printing we got out--I can remember waiting for days because Earl Warren had wanted to read the literature--every bit of it--himself before it went to the printer; then we'd never get an answer back from Warren. Finally we'd say, "We haven't got enough time; let's just print it." We'd finally order the printer to go ahead and print it and ship it out. I mean, he was very careful; there'd been no Watergates in his life. He would have known what was going on.

Fry: Murray Draper says that you did more than anybody to pull the campaign together.

Wollenberg: I did? I think he's trying to kid somebody. We didn't have any real problems in holding people together, you know. Like Fresno County, where everybody was frightened to death, you know, of what would happen with the Democratic vote. As I remember it, he just piled up a terrific vote there, and all the leading Democrats of the area that counted were interested in Earl Warren.

Fry: Did you have a Democrat heading up the Fresno part of the campaign?

Wollenberg: Yes, I think so. He was Jack O'Neill, a fellow who owned a string of cotton gins up and down the valley, or cottonseed oil presses, something like that. Fine person.

And then the old-liner Republicans there like--oh, this lawyer--I forget his name now. He'd been in the legislature at one time, he was a real old-line Republican, and he was for Earl Warren.

Fry: You must have done a great deal of work in getting people to take over responsibility for the individual counties.

Wollenberg: We all did, yes.

Fry: The public relations firm, I think, was George Lynn?

Wollenberg: George Lynn, who was a newspaperman, yes; George did most of it.

Fry: Why did he work out better than Whitaker had in '42?

Wollenberg: George Lynn didn't have any axes to grind; he was working for Earl Warren. George was just a pure type of person who took on a client--that was it. He had his headaches, but they were mainly around trying to get something done, you know.

Fry: Getting the copy approved? [laughter]

Wollenberg: That's right.

Fry: What did he do? Did he do a lot more than just send out press releases?

Wollenberg: I don't think so. I don't think he did a lot more than that. He hired a couple of other people; there may have been three or four other people who were writing copy. He had a woman who aimed at women's interests and able to get articles on the woman's page and things of that kind.

Murray and I were helping out getting items placed on other pages of the newspaper, other than the news columns. Little things.

Fry: Did you find that some newspapers were easier than others; if so, which ones?

- Wollenberg: No, I don't think it was a question of "easier than others." The only time you'd find that out is not so much in placing things as you would in--For the most part, the press was his friend. He had a very friendly press in California. You had to watch some who would get red-hot once in a while and come up with a brilliant idea that they wanted to have him come out for--something that was their pet project. Then they'd never understand why he wouldn't. Things of that kind.
- Fry: That could be a problem, with something as powerful as a newspaper. What's an example of that?
- Wollenberg: I can't think of any of the projects. You see, from the very beginning he had friends in the papers. There was the old gentleman, Mr. Alfred Harrell, who owned the Bakersfield papers. You know who I mean?
- Fry: I know who you mean, yes.
- Wollenberg: He's been dead a long time now. Then what was the name of the man in Stockton that owned the Stockton Record? Irving Martin, Sr. These were all old admirers. In Santa Barbara--Tom Storke was a leading Democrat in this state and owned the leading Democratic paper on the coast. [telephone interruption] These were all old friends of Earl Warren's who admired him and always stuck with him.
- Fry: The L.A. Times was so terribly powerful down south.
- Wollenberg: Yes. I think they never wanted to take Earl Warren on in any way. I think they were pretty good judges of how far they'd get; they had to be careful too. They had their little things to think about, such as running a powerful newspaper and taking a position against a person with the personal popularity that he had. They weren't going to get stuck out on a limb.
- Fry: Were the Chandlers part of the group who wanted to put Knight in?
- Wollenberg: I don't know. Of course, it never did get very far. It never amounted to anything; it was just a suggestion and that was the end of it. As I recall, the suggestion came from Goodie Knight himself, didn't it? I don't think you'll find anyone else quoted, so I don't know how serious anyone else was about it--because they dumped Goodie Knight when they had a chance.

In 1958 when Senator William F. Knowland came out here and ran for governor and Pat Brown was elected, they pushed

Wollenberg: Governor Goodie Knight out of running. In all of this, I don't know how loyal they were to him, or to anybody else, for that matter, in those days.

Fry: Asa Call was fairly close to the Chandler crowd down there, wasn't he?

Wollenberg: Yes, I think so. He was the lawyer for them, wasn't he, at that time? I'm not sure.

Fry: I really don't know. I think he helped out a lot in a number of campaigns and was the equivalent down there to someone up here like Steinhart, wasn't he?

More on Presidential Campaigns of 1948 and 1952

Wollenberg: I doubt it; I don't think so. I don't know that there was really an equivalent down there. Back in '48 in Philadelphia --the political editor of the Times, Kyle Palmer, was very friendly and helpful. Tough little guy. He worked hard, right on the floor--ran errands and attended meetings and did everything, sure. Anything he was asked to do. Yes, he had a lot of contacts--a good man to send around to talk.

Fry: I should think so; he'd be very knowledgeable. Was it '48 when Kyle Palmer was a go-between at the Republican convention?

Wollenberg: The night that Dewey won the nomination, it says in an excerpt from the book* that Earl Warren went home and went to bed. The Dewey people had every delegation send two people over to a caucus, that Dewey personally went down all the list of everybody--

Fry: For vice-president?

Wollenberg: Yes. Kyle Palmer and I went over. We just sat. They kept trying to get one of us to make a statement early in the meeting that Warren would run. We couldn't say it; we didn't know.

*Leo Katcher, Earl Warren, a Political Biography, McGraw-Hill Book Company, New York, 1967.

Wollenberg: We just simply said that we didn't know that he'd accept, that he'd said no in '44, that he hadn't come back to Philadelphia to run for anything, and that was that.

Finally, they eliminated (I can't think of even one name but) lots of names as they went down the list. Dewey would very bluntly say, "No, I won't have him," when somebody would suggest somebody. He'd always come back to Earl Warren. I think he personally and they personally figured that the West Coast, the West--you know--needed to be on the ticket. I think they wanted him real badly.

When Warren said he would accept, he gave his consent reluctantly. He was not interested in the vice-presidency of the ticket, but he did it as a Republican on the thought that he certainly owed it to the party, if they thought he was the person for it, and that's it.

Fry: Was there any talk of Halleck at the meeting?

Wollenberg: No, there wasn't open talk of Halleck. I always had the impression that the Halleck thing was settled, that it would be otherwise, for some reason. You see, Halleck came from an area that just didn't suit the planning; they wanted to get out in the West, really in the West.

Fry: Not the Middle West.

Wollenberg: Not the Middle West. They didn't want--where was he, Ohio?

Fry: It surprises me that Halleck's name didn't come up on that list, because I thought he was another logical person.

Wollenberg: Yes, but I think it was eliminated earlier as a private deal between him and Dewey. He always stayed loyal to Dewey and everything. I think they probably talked it out and said, "Look, we just won't go ahead with it. Forget it." In any event, he was more useful in the House to a Republican administration.

At the time, everybody was convinced that Dewey would be elected. The Republican party was just going through the motions. Even Dewey himself, and right through everything. The way they ran the campaign, what they had Earl Warren doing in the campaign, and everything else, was indicative of that. They tried to write him speeches that weren't Earl Warren speeches at all. He wouldn't kid them; he gave his own. They'd importune him to say this or say that in a certain place; sometimes he would, but mostly he wouldn't.

Fry: Were you on the campaign train?

Wollenberg: No. Swiebert was, for a while. The poor guy had a breakdown; he couldn't take it any longer. These speeches would come in, and Warren would tell Swiebert to go back and write him a different one, and he didn't know how to do it. Warren would say, "Does this sound like me? I won't give a thing like this," if it didn't sound like him. It wasn't his speech.

Then Warren refused to use the speech writers they supplied him from the Republican headquarters--sort of Hollywood boys that just didn't fit at all with Earl Warren.

Fry: That was a terrific speech-writing load, then, I guess.

Wollenberg: Yes. Without any real time to prepare. You know, you'd try to find out locally what they were interested in and what they wanted to hear him say. But he just wouldn't say it to be saying it unless he knew what he was talking about.

Fry: In the days before the convention, was there any plan for Earl Warren to be nominated as a presidential candidate in case of a deadlock between Dewey and Taft and Vandenberg?

Wollenberg: Sure. If there had been a real deadlock, we all had the feeling that that was his only opportunity. If Dewey didn't get all those votes right off the bat, there was a real opportunity for Warren. He didn't go into the convention with any sewed-up delegations or votes--his own, that's all, California. As long as they'd stay with him and as long as no one got the required majority for nomination, he sat there as a good possible compromise.

He did the same thing in '52 in Chicago as between Taft and Eisenhower, and that was it.

Fry: Warren was talked about as presidential material in the press as early as '43, then gradually gathered more popular support.

Wollenberg: I guess so. That's awful early.

Fry: That's the first that I could find where it was mentioned.

Wollenberg: I see. That was when he went back to the '44 convention. He took a delegation back there as a favorite son; he had the California delegation then. He was offered then--undoubtedly offered and refused--the vice-presidential nomination with Dewey that time.

- Fry: I wondered what Warren's feelings were and at what point he became a very serious candidate for the White House. I have some indications that there may have been some meetings as early as after the '44 election.
- Wollenberg: There might have been. I don't know anything about it.
- Fry: Were you in any of those?
- Wollenberg: No, not at all. Nothing.
- Fry: When you began working on the '48 convention, what were your perceptions of the viability of Warren and the seriousness of him as a White House possibility?
- Wollenberg: Well, again, it was just the West hadn't, up to then in any party, received any real national recognition of any kind. He was the one man in the West, I suppose, they could have looked to as presidential timber, in either party as a matter of fact.
- As far as his own mind was concerned, I just don't know. I think he certainly must have felt along the line that he was in a position to be chosen and was making himself available as best he could. He had no big primary push throughout the country, as we think of it today. There was no scrabbling for delegates around the country.
- Fry: Why didn't he try in some of the primaries?
- Wollenberg: I don't know. I guess he tried in '52. He picked up a sprinkling in Wisconsin, but that was the only place. He had tried a couple of places.
- Fry: Was he adamant to you, before the '48 convention, that he did not want to go up as vice-president?
- Wollenberg: No, not with me. I just had the general understanding that he didn't go back there to the convention to make as much of an effort as he made, just to become vice-president. Clearly, he didn't want it; I'm sure. The only thing he did want was to run for president. And then he felt that, well, this was the time for recognition of any kind. So that was it, sort of a mutual recognition.

After that, I did drive home from Philadelphia in '48. I went up to New York for about a week before I came back home. Everywhere I went and whoever I talked to--I remember a New York taxi driver; I told him I'd been to the Republican convention

Wollenberg: or something like that, just to start a conversation. I remember his remark, "Well, you fellows sure ball it up. Had you just reversed that ticket, we'd all been for you."

Wherever you went, "It should have been Warren-Dewey instead of Dewey-Warren." There'd have been no problem.

Fry: What were the main differences between Dewey and Warren? You notice Katcher*, in that section I sent you, mentions that they had some differences.

Wollenberg: Yes, they had differences. They're entirely different men--their life styles; I mean. It's the difference between the East and the West in successful men, lawyers. You find it everywhere. Those were the chief differences. They just did not match up. I don't think that it was a compatible team. I don't know that it made any difference. What difference does that make? There are differences between all president-vice president teams.

Fry: Katcher mentions that they had had many conflicts, some open and some covert. Do you know what he meant by that?

Wollenberg: No. Does he mention any open ones?

Fry: No, he doesn't tell us the open ones either. [laughter]

Wollenberg: No, I didn't think he did.

Fry: I thought I'd missed something.

Wollenberg: I don't think there were any real serious conflicts. I think the appearance of conflict arose because the Eastern people running the campaign didn't understand Earl Warren, and vice versa. They were going to be elected; they expected him just to be a good errand boy and do as he was told. You don't do that; at least tell him what it's all about and where you're going. It just didn't work.

I don't think that did any detriment to the campaign as such. I don't think that ruined or even hurt the Dewey campaign. Sure it hurt it in that maybe they should have had him in there listening to some of the things he would have said or had to say, which I don't think he had the opportunity of doing.

*Ibid, p. 263.

Wollenberg: The difference in the two men was just the difference between East and West attitudes at that time particularly.

Fry: What about James Hagerty's role during the convention?

Wollenberg: He was Dewey's executive secretary. There were two secretaries from New York state. Hagerty was the complete manager and secretary, and I think the brain in the thing was probably Herbert Brownell. [telephone interruption]

Fry: You were just about to talk about James Hagerty.

Wollenberg: He was certainly the man who was the secretary and the executive officer for Dewey. One of the campaign specialists was Brownell.

You mention the difference between Warren and Dewey. There were a lot of similarities; they both were family men who had fairly young children, several children. They were both around the same age, I guess; I don't think there was much difference in their age. They had both been in the law, both had prosecuted a good deal. Both had been governors. But there was also all the difference of the wide continent between them. This, I think, was the main difference in the two. I don't think there were any open conflicts; I never heard of one, and neither does Mr. Katcher* because he doesn't tell us what he's talking about. Hidden conflicts--I don't know what they could have been. I think it became a runaway campaign in one segment in that the Republican party was so confident that it shouldn't rock the boat and not take issues out. In those few short weeks, Truman taught everybody in this country a campaign lesson of what you have to do.

Fry: He certainly did. It's become a classic reference for any campaign.

Wollenberg: That's right. And I'm afraid the Republican party and the Dewey campaign set it up for that; it gave Truman an opportunity because they were not in a position to discuss issues.

Fry: Maybe we'd better get down here what your role was in the convention.

Wollenberg: Mine was a very simple role in '48. I went back East and set up the headquarters, first at the great big downtown hotel in Philadelphia--we were way upstairs. Then we moved to the Warwick. The California delegation was put up at the Warwick, so we moved our headquarters up to the Warwick; they had space for us.

*Ibid, p. 263.

Wollenberg: Originally we were downtown, probably in a better location for most of the activity, where the other candidates were. But we were way upstairs in a little corner and couldn't get elevator service to get up there. Everything was a mess, and we thought we'd be better off staying right closer. So, sort of by mutual consent, we moved up to the Warwick.

Warren was late in getting there himself. We'd have inquiries. There was no national television yet, although that was the first television I'd seen. There was television, but it was only on the East Coast and only in the area there.

Fry: I think I saw it in Chicago.

Wollenberg: I see. But people wanted appearances, and other candidates (like Dewey, Stassen, and others) were on all the time. But Warren wasn't even available for time being offered to him. Some of the time we were able to fill up by talking for him; I talked on a few occasions on radio and on television. We sent others over.

There were some young women around at that time who were very knowledgeable; we sent them on programs.

Fry: From the delegation?

Wollenberg: The delegation train hadn't come in yet. This was a staff setup. That's about all we had to work with. It was not what you'd call a well-organized campaign. It was very poorly organized, making do with what we had from time to time.

[end tape 8, side 1; begin tape 8, side 2]

Fry: What did you have to say to the press? Were they mainly clamoring for some definite statement from Earl Warren about throwing his support?

Wollenberg: Yes. That was always the question of the delegation: "Are you going to go with this candidate or that or the other?" Stassen people were coming in; there was a big group from California for Stassen. They were not delegates but they were "Stassen for President" people, and they were around. We'd try to quiet them and so on. They had no vote, though; it didn't amount to much. But there were lots of things of that kind going on.

Fry: What was the word from Warren at that time on whether he would accept a vice-presidential nomination?

- Wollenberg: No word at all. There was no discussion. Nothing. They weren't talking about him as vice-president in the general public or the press at that time. I was never asked about it, as I recall. I don't think anyone was, at that particular time; it was later.
- Fry: Was there any basis for the rumor that Earl Warren might be named U.S. attorney general?
- Wollenberg: No, I don't think so. There were rumors, but I don't think there was any basis for it. I don't think he wanted the position or was even interested in it.
- Fry: The other thing I wonder about was were you in on the soul-searching when Warren was trying to decide whether or not to accept Dewey's offer to be vice-president. Did he talk to you about this?
- Wollenberg: No. He felt, I'm sure, that he had worked in the Republican party, and they said that this was the best ticket and so on; on that basis, I think he consented to run.
- Fry: Okay. We kind of slid off the '46 campaign, and there were two other questions I wanted to ask you on that before we really leave it. One of them was that (apparently) there had been a couple of efforts to kick Earl Warren upstairs. Do you know anything about the effort to make Warren Senator?
- Wollenberg: No. There was no reason for it. He appointed Knowland, subsequently appointed Kuchel, and he was not about to become a United States Senator.
- Fry: One of these may have been when Hiram Johnson died; I don't know.
- Wollenberg: Oh, well, I suppose somebody would have come up with the thought that he should resign and then get appointed by Lieutenant Governor Fred Houser, or something. That, I imagine, was the dreaming of somebody who thought it would be a good idea. But I don't think he was ever interested in a legislative position or legislative work. I don't think he would have even given it a thought. Not only that, I don't think he would take part in that kind of a transaction in any way at all--even consider it or even discuss (the possibility) with anyone. This is not typical of Earl Warren.
- Fry: I thought it was an attempt to get rid of Warren on the state scene.

- Wollenberg: No. He'd have to be party to it; he wouldn't do it. I mean, he just wouldn't. I don't know if it was ever discussed with him; I don't think he'd discuss it with anybody if they tried to discuss it.
- Fry: I can't figure out who wanted to do this. It was sort of in the air, and at this date it's very hard to tie down.
- Wollenberg: I doubt if it was ever in the air.
- Fry: Well, there was a letter from Tom Storke to Warren saying, "Don't let them make you Senator. They're just trying to sacrifice you." I didn't know who "them" was, and Storke didn't remember either.
- Wollenberg: Storke probably just felt that if that was being offered, don't let them do it. I don't think Tom Storke or anyone else had to worry about anything like that. I don't think it would have happened in any event. I don't believe he was interested in legislative work in the United States Senate, and that was that.
- Fry: I'd like to read you a collection of names that I have of people that I think are a nucleus for either rounding up funds or furnishing funds for Warren's campaigns. I want to check this list with you and get what you know.
- The ones I have down here are Jesse Steinhart, Hale, Crocker--
- Wollenberg: Which Hale? There were several; I don't know.
- Fry: I'm not sure. It was the Hale of Hale Department Store in Oakland. Did you not know a Hale?
- Wollenberg: Of course, the Hale Brothers Department Store was here and in Oakland, and later was part of the May Company setup and all of that. No, I don't know Hale's connection in anything.
- Fry: William Crocker?
- Wollenberg: I don't know how much he got into it, but could have been. The old man went way back to the Hiram Johnson days and before, but, he was not a Hiram Johnson man--he was on the other side, if it was the senior Crocker.
- Fry: Robert Dollar?

Wollenberg: Never heard that he had anything to do with it ever.

Fry: What about Heller?

Wollenberg: What Heller? Walter Heller? You mean the husband of Elly Heller, the present regent of the University? I don't know; I couldn't answer that. That's Wells Fargo Bank.

Fry: I wondered because he was such a big Democrat.

Wollenberg: Yes. That's what I was going to say to you. I doubt it, but I don't know. He could have assisted somewhere along the line. Lots of these big Democrats were for Earl Warren for governor, yes.

Fry: Walter Haas?

Wollenberg: Yes. Have you interviewed him? He's available.

Fry: Somebody else is interviewing him for our office, I think.

And a couple of southern California names--Hotchkis and Asa Call.

Wollenberg: Yes, they were probably connected with the campaign, as you said.

Fry: Now we'll make another paragraph and, if you're ready, go into the 1952 convention. What did you do there?

Wollenberg: It was the same sort of thing. I went back to Chicago with Murray Draper, and we set up an office in the old Stevens Hotel--now the Conrad Hilton--that's about all. We did do a few things.

I know that the other candidates, that is both Taft and Eisenhower, were courting Warren very strongly there earlier in the game, because that's the convention where the Texas and Tennessee delegations for Ike were seated with the vote of the California people.

Fry: Yes. What do you know about that? It's a real crucial point in the convention, wasn't it?

Wollenberg: Yes. I know that Earl Warren said that he had studied the thing thoroughly. He had studied the election laws of the state; he'd read them and looked at it. As far as he could see, the Eisenhower delegates were entitled to be seated. He thought that was a fair statement of it, and that's how he felt about it.

Fry: Was this his statement to the entire delegation?

Wollenberg: I don't know; I didn't hear him make any statement to the entire delegation. This, you see, was one of the committees of the convention, and several members of the California delegation were on this credentials committee. This was not the business of the whole delegation, except that they adopted the committee report.

Fry: Yes. Later they had to vote on the committee report.

Wollenberg: Yes. The fight was in the committee.

Fry: And was that Warren's statement to the members?

Wollenberg: I don't know. I don't know what he said to them; I wasn't there.

Fry: This was the year, wasn't it, when it looked like a deadlock might be likely, because Taft and Eisenhower--

Wollenberg: Warren's hope lay in a deadlock between Eisenhower and Taft.

Fry: Were you privy enough to any of this in the weeks before the convention to know, for instance, why he didn't enter more primaries?

Wollenberg: No. I can give you my personal feeling why. I don't think he wanted to go out and fight for delegates. In Wisconsin, where he did campaign, he picked up four or five--whatever the number was--very few. He was not financed to do it in any way at all. Whether that was a controlling factor or not I don't know. And, you know, to even make the trips took money. Whether he had the local support in various states to form the nucleus for delegates, I can't answer that.

Fry: He was so strong in California

Wollenberg: That's right. In '52 at the convention, the California delegation stayed with him all the way, right through.

Fry: I wonder what support he had in places like Washington and New York.

Wollenberg: State of Washington?

Fry: No, Washington, D.C. For instance, I wonder if he got some encouragement from Senator Knowland.

Wollenberg: Knowland made the nominating speech.

Fry: Well, I'm talking long before the convention, in the pre-convention stages.

Wollenberg: I can't answer that. The nominating speech--that was when they all said that Knowland was nominating Chiang Kai-Shek, they called him the Senator from Formosa. That was what he talked about. I was talking to Squire Behrens the other day; he's writing a book, as you told me. He called me to get my recollection on a couple of things for his book, and he quoted from the nominating speech. He had it on the desk in front of him and quoted something about free China [Taiwan].

Fry: Didn't Knowland give the nominating speech for Nixon for vice-president, too?

Wollenberg: I think he seconded the nomination, but I'm not sure.

Fry: But his nominating speech for Earl Warren was largely about Formosa?

Wollenberg: Oh, no. He talked about Earl Warren a little bit, but he said that this is a man who will be interested in peoples all over the world; this was a big issue at the time. He did bring in some strong reference to support of China. It wouldn't be fair for me to say what detail and how.

Fry: Can you talk first-hand about the delegation list? A lot of Nixon-Eisenhower men got on that list.

Wollenberg: That's right, but they all stayed loyal under their commitment to Earl Warren.

Fry: For that first roll call.

Wollenberg: For the one and only roll; there was only one. They never changed on that in '52.

In '48, the California delegation at the very end, made it unanimous; they were released and they switched over, didn't they, to Dewey? Yes. That's right, they did. I know they did. It rained like hell that night. In '52 I took the letter out from headquarters to Knowland on the floor, releasing the delegation to do what it wanted. It didn't say Warren was releasing the delegation to Eisenhower, as I recall.

Fry: Why didn't Warren release the delegation for Eisenhower?

Wollenberg: I don't know.

Fry: --Because he just lacked a handful of votes at the end of the first ballot.

Wollenberg: Eisenhower went in on the first ballot; it was over with.

Fry: Delegations were polled alphabetically and--

Wollenberg: Well then they made it unanimous. I think when they went all through the alphabet, Ike was nominated; he had the votes. Dewey didn't; Dewey was only about twenty or thirty votes short--less than that, maybe.

Fry: I'm not sure California ever really released their delegation in '52.

Wollenberg: No, they didn't.

Fry: And technically, Eisenhower was not unanimously nominated, then?

Wollenberg: I don't know; maybe on the record they weren't. You may be right. Except that general resolution had come through making it unanimous; they all do that. They didn't have to release everybody.

Fry: Were you in the caucuses during the pressures from Eisenhower and Taft, wooing the California delegation before the vote?

Wollenberg: No, not really. I don't think that they ever went to the delegation except the one incident that's talked about as the thing on the train. That was done by Nixon. Other than that I don't think there was any wooing. Maybe individuals had made some overtures, but I think mostly it was to obtain direct contact with Warren, who for a period would not talk to anyone about it.

Fry: You mean he really had his door closed to anybody from those two camps?

Wollenberg: For a long time.

Fry: At Chicago?

Wollenberg: I don't know what conferences may have taken place between the principals themselves. I didn't ever hear of any.

Fry: Did you hear of any offers made to Warren?

Wollenberg: No.

Fry: What about offers made to Knowland, who was chairman of the delegation?

Wollenberg: I didn't know of anything; I didn't have any contact there at all.

Fry: Did you know a Paul Davis who was there?

Wollenberg: I didn't know a Paul Davis.

Fry: This Paul Davis had worked under Eisenhower as vice-president in charge of development of Columbia, or something. Then he came out here later and was at Stanford in the same capacity.

Wollenberg: I know who you mean, but I don't remember him back at that time. He could have been around there. He came out here; didn't he have some sort of agency to raise money for universities and colleges and educational funds?

Fry: Yes.

Wollenberg: When I was president of the board at San Francisco State College, he wooed me for a long time to get up a scheme--I don't remember what--that he thought the state colleges could do. That's right. He was a friend at that time of the present chancellor of the system--Glenn S. Dumke. Dumke was a delegate in '48 or '52; that's when I first met him, I guess.

Fry: Was he a delegate? I didn't know that.

Wollenberg: Yes. I don't know whether he was in '48 or '52. He was at one of the conventions. [looking at a list of '52 delegates] It's hard to find anybody on here.

Fry: The reason I ask you about Paul Davis is that I recently got a lead that he may have been the go-between between Eisenhower and Warren in any negotiations and offers that were made.

Wollenberg: Golly, I don't know.

Fry: I was trying to assess whether it would be worthwhile interviewing him.

Wollenberg: I wouldn't know. Not to my knowledge. [still looking at list] There are people here on this delegate-at-large list that are still available. I guess maybe you could try it. Mendel Silverberg--is he still alive? He was at an important fund raiser in the south. Mac Faries is alive, isn't he?

Fry: Yes. We did talk to him.

Wollenberg: Laugh[lin] Waters is alive--Laughlin A. Waters.

Fry: Was he in the legislature with you?

Wollenberg: Yes.

Fry: Which people on the list were the Nixon-Eisenhower people?

Wollenberg: I wouldn't know; they came out of the south, you see. Mary Woolley probably was one, but I don't know for sure. Gordon Richmond? I don't know; he may have been one too--Orange County. They may have been wanting to do things.

Nobody ever knew where John Phillips stood; he was all over everywhere. Phil Wilkins is still alive; he's a judge in Sacramento.

Fry: Was he heavily Nixon-Eisenhower?

Wollenberg: No, no, no. I don't think so. I think he was for Warren--from the north of the state, I would say he was. Tom Mellon, of course, is available. Steve Malatesta--he's gone; he's dead. Bill Reichel is alive, isn't he? Have you ever talked to Bill?

Fry: He died last summer.

Wollenberg: He'd know more than any of us. Elystus L. Hayes--is he still alive? He's the former owner of the San Jose Mercury Herald, the publisher; of course, he sold the paper long ago, the family did. I don't know; he may be dead too. Don Grunsky is alive; he's a state senator. Leroy Johnson--is he still a congressman or is he dead?

Fry: I think he's alive.

Wollenberg: I think he is. I guess Milton Reiman is dead.

Fry: We have some ambiguous statements about where Murray Chotiner was in all of this from people who were on a staff managing things for the delegation.

Wollenberg: He was strictly Nixon; he wasn't in the delegation or connected. He used to drop in and sit around all the time, but he never did any--

Fry: Was he in Eisenhower's headquarters for any reason?

Wollenberg: I don't think so. I don't ever recollect him being connected there.

Fry: Warren tells me how surprised he was when he went over to pay his respects to Eisenhower, and Murry Chotiner opened the door.

Wollenberg: I didn't hear that.

Fry: That'll be out in Warren's autobiography.

Wollenberg: Murray Chotiner will love that--making him important. Mildred Younger is alive. She seconded the nominating speech; she's the wife of the present attorney general of the state. I haven't seen her in many, many years. She was awfully bright as a young person; what she is today, I wouldn't know. She ran for state senator once in Los Angeles, and almost won. She was loyal over the period, as far as anybody knew. She made a speech on the floor; did very well.

Fry: Why was this such a mixed delegation? Does that indicate that Warren was not serious about going for broke for the nomination?

Wollenberg: No, I don't think so. They were all loyal; they stuck with him. He didn't lose one of these people. This is the thing that people at that time wouldn't believe, that he had the delegation and could hold it. Nobody believed that he could hold it. His friends did, but I mean nobody in the press or on the outside. They all thought that when the roll call came, he'd lose a big hunk of the delegation. But it never did happen; they stayed till the end. So, the selection of the delegation certainly didn't hurt him any. I've never read where anybody said that they were Warren delegates in name only, because they couldn't say that about it legally; they stayed right till the very end.

Fry: Which was the beginning really; the end was the beginning.

Wollenberg: That's right.

Fry: Did you recall any mention of Earl Warren as a Supreme Court appointee at that time?

Wollenberg: None whatsoever. As far as I know, no one else ever had either. That's why it was all a mystery. The big question everybody asks is was there a deal? The reason they still ask the question is that nobody had any information or had ever heard of it, or had ever dreamt of it at that time. I don't think the possibility existed at that time.

Fry: It seems Warren would have received a lot of pressure to be a vice-presidential candidate again.

Wollenberg: In '52? I doubt it.

Fry: Did you hear anything about that?

Wollenberg: No. Don't you think that that's just a lot of baloney? I don't think he ever could have had it. Don't you think that if Nixon were really the important person that everybody wanted to make him in connection with the Eisenhower candidacy at that time, trying to get California delegates for Eisenhower, that he was already in and set up for the vice-presidency? Why should these same people be interested in Warren as a vice-presidential candidate if it were Nixon who wanted to put Warren down? That's why I don't think either story of a reward for Warren is necessarily true. It's entirely inconsistent.

Fry: What about Knowland, who was the senior Senator and chairman of the delegation, as a vice-presidential possibility?

Wollenberg: I suppose it would have been very easy to make a deal for Knowland, if anybody had wanted to, to get Warren out. I don't mean it would have been easy to have gotten it from the Warren point of view, but I think it would have been very easy from the Eisenhower point of view. I think they would have been as delighted to have Knowland as Nixon, if Knowland really wanted to get into the deal. I never heard of it. There was a possibility that he could be chosen, I suppose. But I don't know whether it was open, as they say it was, and they chose Nixon.

There are all kinds of stories that they wanted either Nixon or Knowland. They took Nixon because he was loyal to Eisenhower, supposedly, from the very beginning, whereas Knowland was loyal to Warren.

Fry: Did Knowland have some past connections at that time, in people's minds?

Wollenberg: What kind of connections?

Fry: I thought that there had been statements made that Knowland was more a Taft man than an Eisenhower man.

Wollenberg: I don't have any way of knowing. I didn't think so.

Fry: That might have weakened him as a vice-presidential possibility.

Wollenberg: If Knowland was pro-Taft, he didn't get in and make any fight, to my knowledge, for Taft delegations in the Texas and Tennessee squabbles--at least in public or when I was around.

Fry: On the seating of those sixty-eight southern delegates, the big story that you keep hearing is the lobbying that was done by Nixon to get the Eisenhower delegates seated and, particularly within the California delegation, to get the committee report adopted. Is that true?

Wollenberg: I don't recall. I don't know of it being so. I know that Warren had at one time expressed an opinion that under the law it was the fair and just thing to do.

But, as I told you, I don't recall any great work by Knowland. Might have been, but I wasn't out around the delegates very much; they were at another hotel way uptown from headquarters.

I only saw delegates when they came into our headquarters. We were mainly interested in trying to get delegates from other states to come in and meet Warren, because whenever they did, both in Philadelphia in '48 and Chicago in '52, they came away saying, "Gee, he's a great man; he's the kind of a man I'd like to see president."

But none of them was free to do anything about it when the rolls were called. Some would frankly tell you that if they had their own vote to cast, it would be cast that way.

Fry: So you got the picture of having some support, then, if there'd been a deadlock?

Wollenberg: Yes, oh yes. We had a big picture of support.

Fry: Were you counting noses?

Wollenberg: In sort of an amateurish, stupid, fumbling kind of way, I suppose we were.

Fry: Do you remember what you thought you could count on, if you had a second ballot with a deadlock?

Wollenberg: No, I can't remember.

Fry: I wish you could remember; that would really be interesting.

Wollenberg: No. We thought that it had to go more than two or three ballots, at least three or four, or somewhere in that neighborhood, before it would be. You see, there wasn't any other strong

- Wollenberg: candidate like in '48 when you had the possibility of Vandenberg making a split, and the Stassen votes were always there. That's the nearest, I guess, Stassen ever came to the nomination. He's been running ever since. He's quite a guy.
- Fry: He had the decibels at that convention in '48, as I remember.
- Wollenberg: He did; he had an organized, noisy crowd in the balcony. In '52, he didn't really amount to anything.
- Fry: Were Taft and Eisenhower neck and neck when you first went back to Chicago?
- Wollenberg: I guess so; I guess so. These Texas-Tennessee votes were very important.
- Fry: Yes. The California delegation apparently cast its vote as a unanimous unit for seating the contested delegation, the pro-Eisenhower delegation. Is that your memory of it?
- Wollenberg: Yes.
- Fry: Did you see this at the time as a major factor for Eisenhower, in addition to the fact that these Texas, Tennessee, and Georgia delegates were seated? The rest of the convention thought this indicated that the entire California delegation would go for Eisenhower as soon as they were released.
- Wollenberg: I don't know; I don't think that was true. I think probably there were still people in the delegation who would have gone to Taft.
- Fry: Yes, I think I agree. It would have been untrue, but in the minds of the others in the convention, they misinterpreted this and thought that it meant that the whole California delegation would vote en masse for Eisenhower once released, because they had voted en masse for the seating of the Eisenhower delegates.
- Wollenberg: That could have been, but I don't remember that as ever being under discussion at all or anybody thinking of that.
- Fry: Brownell was in this convention, too; running the Eisenhower campaign. Do you remember anything about how that was run?
- Wollenberg: I know that Brownell apparently learned a lot in '48 and was running it; there was no real fumbling around. It looked to me like they were going headlong for it on the first ballot, and they reached it.

Fry: Was it your impression that the Taft group's management was rather abrasive to the rest of the convention?

Wollenberg: Taft was a rather positive type of individual, politically. I guess you'd say that it may have been abrasive; I don't know where or when.

I can remember, for example, when the California delegation arrived in front of the hotel in buses, and Governor Warren was with them. When they got out of their cars in front of the hotel, the Taft people planted a great big elephant with a big Taft blanket over it. Cameramen were filming Warren. It was the one crack at getting some national television exposure. They pulled this elephant across, right in front of the cameras, and things like that. I mean, they didn't give you your day; when you got a break, they broke it up to that extent. [laughter]

That may have hurt them right at the beginning with the California delegation, many of whom had never even seen television. They were told they were going to get their pictures and, oh my goodness, think of the folks at home looking at us. Then this elephant came across, so I don't know. So the dirty trick committee was active even in those days. [laughter]

Fry: I thought it was '52 when the buses bringing the Warren delegation in had the wrong signs on them; they showed up with Eisenhower signs on them. They were bringing the delegation from the train station in Chicago to the hotel.

Wollenberg: Yes, but that was corrected at the station. That could have been the confusion of the transportation company, or anything else. I don't think they went out and decorated the buses. You know, it could have been that the wrong bunch of buses were sent out at the wrong time or something; I don't know.

Things like that did happen. But they didn't drive through town with them; the signs were removed.

I don't think that we had the money to paint any signs, or have any signs to hang on buses. I don't think we had signs for the Warren delegation; I think they came up in unmarked buses. They may have had a few little quarter cards or something for the delegates to hold at the windows, but that's about as much as we had.

Fry: Before television coverage of your arrivals, what would have been the purpose of decorated buses?

- Wollenberg: Only as you go through the streets at convention city delegates from other places see them and the candidate's name comes out; it's only that. Wherever you get a chance to hang a sign, you hang a sign, that's all.
- Fry: Signs were good?
- Wollenberg: They were then; I guess now you'd spend the money for something else.
- Fry: Something more expensive.
- Wollenberg: Yes.
- Fry: All right. Do you have anything else you'd like to talk about?
- Wollenberg: No, I guess not.

Court Appointments for Wollenberg

- Fry: When were you appointed judge?
- Wollenberg: I was appointed Superior Court judge in September of '47, after the session of the state legislature. Then I was appointed on this bench in 1958 by Eisenhower; appointed U.S. District Judge, California Northern District.
- Fry: Did you know that Warren was going to appoint you to the state court?
- Wollenberg: This is exactly how the whole thing happened:
[end tape 8, side 2; begin tape 9, side 1]
- Wollenberg: It was after the adjournment of the '47 session--the night of adjournment. The custom of Earl Warren was to drop by both houses of the legislature when they were finished, to shake hands, say goodbye to legislators, and so forth.

Mrs. Wollenberg was there, and she and I went to the assembly chamber together. It must have been two in the morning or later, two-thirty or three o'clock in the morning when the legislature broke up. We got in the elevator to go downstairs. It was only a flight down, but there happened to be an elevator with the door open, standing there, and we got in.

Wollenberg: Earl Warren was in the elevator going down, a crowded elevator. We said hello. Mrs. Wollenberg said, "Goodbye, Governor," and he said goodbye.

He said something about, "When are you going home?"

And we said, "When we wake up in the morning." (It was a late session, busy and tiring)--"Sometime tomorrow we're going home."

We got out of the elevator and he started walking; he turned around and he said, "Oh, Velma!" He knew her and always called her by her first name.

She turned around and said, "Yes, Governor?"

And he said, "Will you lend Al to me? I promise not to keep him too long. Do you mind walking over to the hotel alone at this time of night?" It was only across the street.

She said, "Oh no, that's perfectly all right. Keep him all night," or something like that.

He laughed and said, "Al said you weren't going home till you woke up, so I assume he can sleep all day tomorrow if he has to," or some remark of that kind.

So I went off with him. We went in--just the two of us--into his office. He got his key and went through the side door that went directly into his private office, which was off the big office that the governor had in the old Capitol.

It was one of those hot Sacramento nights and he took off his coat and flopped in a great big chair and said, "Take off your coat, sit down and be comfortable. I want to talk to you." We sat there and talked about a couple of things. Then he said, "The real reason I came to get you over here is that I've made up my mind I'm going to appoint you to the superior court if you'll accept it."

I said, "Gee, let me think about it. Do you think I ought to do it?" To go back, I had told him two or three weeks earlier that this was going to be my last session. I wasn't going to run again. I'd been up there long enough, and I couldn't afford to stay around, so I was just leaving, period. I had not asked or mentioned, or was there anything about a court appointment.

I said, "Well, I don't know. I don't know if I'd get re-elected, not having served on the municipal court. There are a lot of good municipal judges down there, and one of them would have a perfectly good reason to take me on."

Wollenberg: He laughed and said, "They won't get anywhere; you can beat them."

I said, "Well, that may be or may not be." We talked generally about things, about the advantages one way or another, what did I really intend to do, and so on. I had no ideas to offer about what I really intended to do. I said, "Well, how soon do you have to know?"

He said, "Take all the time you want; take a week." You know, that kind of thing. "Let me know in an hour," he could have said.

So I came home and rested up and thought about it. In about a week, I called him up and said I'd take it. That's the whole business of my appointment. We didn't ever mention that I would be a judge at anytime. I was the first legislator that he had ever appointed to a judgeship.

Fry: Does that indicate that he really didn't have many people in the legislature that he would want to appoint to judgeships?

Wollenberg: No, later on after he'd broken the ice with me, he appointed several others. They used to come after him then; if he said, "No, I don't do that," or something of that kind, they had a case to point to.

Fry: They'd say, "How about Al Wollenberg," right?

Wollenberg: Yes. So that's the whole story; I didn't make any push for it or ask for it or anything else.

Fry: So you got to return to San Francisco, anyway.

Wollenberg: That's right. I was going to anyway; I wasn't going to stay up there. I was finished.

Hearings on Speaker Sam Collins

Fry: Did we miss an important story about Sam Collins's hearings? Did you run those hearings on Sam Collins just before you left?

Wollenberg: No. They, the assembly itself, ran the hearings.

Fry: Who?

Wollenberg: Well, I was part of the group that started the investigation, I guess, but I didn't have control in any way to select a committee or investigate. Nor was I on the committee that did the investigating.

Fry: You weren't one of the people to ask questions?

Wollenberg: No. Bill Sweigert and myself were the principal witnesses. The committee had us up there over a weekend to testify.

It involved a bill, concerning parole officers, which had some screwy amendments put in and taken out repeatedly. I think it involved the right of a parole officer to make an arrest of a parolee and to follow him into premises without a search warrant where there was suspicion of an illegal activity. A raid on gambling rooms and bars in Orange County had started the thing.

Fry: And the bill was to allow parole officers to do this?

Wollenberg: Yes, but it had been so bolluxed up it was pretty hard to follow. You'd have to get the whole story. I forget the details now.

Fry: Was this a bribery charge?

Wollenberg: Ultimately, Sam Collins was tried on some charge rising out of all this business. I don't know that this particular bill was connected in any way with the charges against Collins. But, this was a mystery as to how the bill got amended and changed and so forth when it came out of committee--things of that kind. There was no charge; this was just to look into how this bill got all bolluxed up the way it was.

Fry: Without following official legislative procedures, you mean?

Wollenberg: Yes. Something of that kind.

Fry: Amendments mysteriously appearing?

Wollenberg: Yes. That's right.

Fry: He was speaker then, so he would have been in a position to--

Wollenberg: Yes. There were others involved with him.

Fry: My absolute last question, and then you can get back to your judging.

Threat on Life, 1960

Fry: I just noticed a headline reference to a threat on your life. What was that about?

Wollenberg: It had nothing to do with politics; it had to do with judging I guess.

Fry: It was much later than your years in the state assembly?

Wollenberg: Much later--it was in 1960 here in San Francisco. I was on the federal bench. It doesn't mean a thing historically. It was just a prisoner up for sentence who had come into the building after I left. He asked the janitor who was cleaning up my chambers, over on Seventh and Mission, where I was, and the janitor said I'd just left.

He said, "That's lucky." He pulled a gun out of his pocket and said, "I was going to kill the old s.o.b.," something like that. Then he walked off, and the janitor alerted the FBI and me that he was looking for me.

They tried to find somebody for two or three weeks; they never did find him. He never showed up in court; he's still a fugitive. Maybe he went and jumped off the bridge; we don't know.

Fry: Just never heard more from him?

Wollenberg: No. That was the one story I can think of. It must be that.

Fry: Of course, the press got hold of it.

Wollenberg: Yes. The press got hold of it, the FBI got hold of it, and the police. The janitor had everybody alerted down there in a hurry. I was the last to hear about it when the police came out to the house. Two FBI men stayed in my house for two weeks, I guess, waiting for the guy to come back--had a regular guard around. Mrs. Wollenberg and I would go out to dinner, and we'd been accompanied by the FBI. When we'd go to a restaurant for dinner, we'd think we'd ditched them--we'd look over at the next table, and there would be the two fellows eating dinner. We'd look at them and laugh and they'd laugh and that was it. [laughter]

Wollenberg: When we'd finished dinner, I'd always say, "Are you fellows finished? I don't want to walk out and make you leave your dinners sitting there." [laughter]

They took it very seriously, and they followed me around for a while. They lost me for a couple of hours once, and they were ready to resign in disgrace until they found me. I promised them after that I wouldn't hide out.

Fry: Is there anything else that you would like to add for posterity?

Wollenberg: I can't think of a thing, Mrs. Fry. It's been a pleasure, and if I think of anything hot, I'll let you know.

Fry: You'll have another chance to write things in when you get your transcript back.

[end tape 9, side 1]

Transcribers: Helen Kratins, Lee Steinback
Final Typists: Marie Herold, Lee Steinback

INTERVIEW HISTORY

The life of Albert C. Wollenberg, Sr., culminated in twenty-three years spent as a federal judge on the bench of the U.S. District Court for the Northern District of California. This second set of interviews, conducted ten years after the first set, focuses primarily on these years, and documents Wollenberg's views on many legal, social, and personal issues and events.

In order to better understand this man who became a federal district judge, these interviews begin with a session on Wollenberg's appointment as an assistant U.S. attorney in San Francisco in 1928. His assignments in this office generally focused on civil and criminal matters. Although he did not handle many Prohibition cases, his comments on that troublesome era shed light on its social, political, and legal realities.

As Wollenberg's years as a California assemblyman were covered so thoroughly by Amelia Fry in the interviews recorded in 1970 and 1973, these years were touched on only as a point of comparison with his tenure as a San Francisco superior court judge between 1947 and 1958. It was in discussions of his work as a trial judge, state and later federal, that Wollenberg showed the most enthusiasm for the oral history process. At this point he helped the interviewer to go beyond the short list of sample cases and events, and filled in much-needed detail about the superior court's work in San Francisco in the 1950s.

Considerable time was allowed for discussion of Wollenberg's years on the Northern District Court so that the judge and the interviewer could probe several levels of questions. The sessions deal with substantive areas of law, changes in the membership and structure of the Northern District Court, as well as personal comments on judging and sentencing philosophy. Wollenberg's firm commitment to trial judging was a crucial thematic link between his years on the Northern District Court and those spent with the superior court in San Francisco.

In order to conduct the necessary background research on Judge Wollenberg's life and career, several places and people were contacted. Wollenberg was actually a companion in this research because he provided many leads for the interviewer to investigate. Two former law clerks, Steven Brick and Chuck Miller, highlighted important areas of law in which Wollenberg adjudicated during his most active years on the district court. The court itself provided a Lexis printout of Wollenberg's cases between 1960 and 1980 for the interviewer to work from. The library at the San Francisco Examiner contained many helpful articles on the judge's years on the superior court. The public relations office of the Southern Pacific Railroad still had scrapbooks covering the Ellis train robbery cases, and the federal Department of Probation allowed the interviewer to see the probation record of Ellen Ellis. A telephone interview with Alvin Fine, who was rabbi at Temple Emanu-El when Wollenberg was president of the temple's board, gave the interviewer insight into the judge's activities in this role, and really opened the whole discussion of Wollenberg's long association with the

Jewish community in San Francisco. Finally, there is a growing bibliography which generally covers the work of lawyers and judges and which provoked many of the interviewer's questions.

Seven taping sessions were held at Judge Wollenberg's chambers at the federal courthouse in San Francisco between July and December 1980. Judge Wollenberg had gone on senior status several years before, but still was working on district court cases in his chambers several days each week. Interviews were scheduled on these days. His large, square office had windows covering two walls, and overlooked the Civic Center area of San Francisco. Bookshelves lined the other two walls, and a large conference table, usually piled high with case files, occupied one side of this room. Used to long hours on the bench, Judge Wollenberg sat behind his desk throughout each of the lengthy taping sessions. He spoke in a soft voice, only raising it sometimes to make a point about a certain case or event. He always created a cordial and unhurried atmosphere for the interviewer.

As light editing of this set of interviews progressed, the transcript was sent to Judge Wollenberg in installments of several chapters. Because of his deepening illness, he was only able to review the first interview. He made only minor changes in this part, and permitted the rest of the transcript to be final typed as the interviewer had edited it. Judge Wollenberg died on April 19, 1981, and the reader may see the appendix for two obituaries which briefly recall his life.

A comment on the judge's papers should be made here. While the family has retained the more personal items, the bulk of Judge Wollenberg's district court papers will remain either in The Historical Society of the U.S. District Court for the Northern District, or at the Federal Records Center in San Bruno, so that scholars will have access to them.

Judge Wollenberg's memoir offers a personal acquaintance with an illustrious member of the Northern District Court, a man who was a distinguished leader in the life of San Francisco and its Jewish community. In it the reader will see the calling of public service passed on from father to son and great accomplishment in many areas.

Sarah L. Sharp
Interviewer-Editor

3 August 1981
Regional Oral History Office
486 The Bancroft Library
University of California at Berkeley

III APPOINTMENT AS ASSISTANT U.S. ATTORNEY, 1928-1934

[Interview 1: July 2, 1980]

[begin tape 1, side 1]

Getting Started

Sharp: I thought we might start this morning by your telling me what the steps were you had to go through to get your appointment as assistant U.S. attorney in 1928.

Wollenberg: Well, George J. Hatfield was the United States attorney at the time. It was a Republican administration; I was a Republican; I came from a Republican family. My father at the time was city superintendent of the Laguna Honda home, and sort of director of social services for the city of San Francisco.* He had been an active polit in the old Bull Moose days with Theodore Roosevelt and Hiram Johnson. Hiram Johnson was one of our Senators from California.

I was interviewed by George Hatfield, and I had an introduction to Senator Johnson, of course. I went to see Senator Samuel Shortridge, both were Republican Senators. They advised Hatfield they had no objection to my appointment. George Hatfield had selected me and others for the opening to be interviewed. I saw my appointment by him; he had the visible power.

Sharp: Did you have to go through some sort of confirmation process besides that?

Wollenberg: No. There was no confirmation process.

Sharp: How old were you at this time, 1928?

*Charles M. Wollenberg was Director of City and County Institutions in San Francisco, 1908-1943. See pp. 12-14 above.

Wollenberg: At that time I was twenty-eight years old. I had been about four years out of Boalt Hall.

Sharp: What had you been doing before you received this appointment?

Wollenberg: I was practicing law. I had an employment in a small office with two practitioners who maintained the office.* They were experienced older men. I came in and did legal work for them, for which they compensated me. They gave me office space and gave me the right to develop a practice of my own if I wished. My cases were my cases, unless there was a good deal of office expense involved; and if there was, I had to bear the burden of that. For the most part, they took care of the overhead in the office.

Sharp: So it seemed quite a change to go to assistant U.S. attorney's office from small law office?

Wollenberg: No, I don't think so. I think that's the way you do it, that's a better way to do it. Most assistants who came over were people with some experience and of that nature.

Sharp: Were most of them about your age, do you remember?

Wollenberg: Yes, there were a great many of them about my age. There were older people as well. It was not a tremendously large office in those days.

Sharp: About how many people were there?

Wollenberg: I guess there weren't more than eight or nine, ten at the most.

Sharp: I see from the record that you were married, a few years before that.

Wollenberg: Yes, 1925.

Sharp: Did your wife think this was a pretty good appointment for you?

Wollenberg: I guess so. We've always been happy; never had any differences over it. I don't recall any great discussions.

Sharp: Do you remember at all what the first few days at this new appointment were like?

*A.B. Weiler and Walter Loewy in San Francisco, 1925-1928.

Wollenberg: Well, I went in and I became acquainted with the office and the business of the office, received my assignments, and went ahead working with other deputies and assistants.

Sharp: You came to this appointment when there were a lot of pressures in the society: Prohibition and a heavy crime load. Just from what I understand, San Francisco must have been at least a pretty complex society in which to live. I wondered if you had any thoughts about that.

Wollenberg: I don't think so. San Francisco has always been complex, but particularly in those earlier days. It was not as complex as it is now. It was very friendly, very cosmopolitan, just as it is today, but we didn't have the pressures that the fractionated groups of people have brought. There were broader and more general lines. It was nothing like that.

There was crime--we always talk about and have heard about the wild and woolly twenties and all--but the federal crime was not as great. There weren't as many statutes on the books as there are today. The counties and the cities and the state took care of the criminal business that they had, with the exception of those that the federal government had undertaken.

We did have cases prosecuted at those times that you don't hear of any more today, because of the failure of the government to prosecute them, such as dealing with the Mann Act, or white slave cases. We had white slave cases, so-called white slave cases. The statute was enforced, and we prosecuted those cases in which there was either a commercial element, or when it involved victims at very young and tender age.

Other than that, the prosecution had been established in, for instance, a [U.S.] Supreme court case that came out of California. It was not prosecuted while I was in the office, but a few years before. It had been a sensational case as far as the press was concerned, and a national scare.

Sharp: What case was this?

Wollenberg: That's The United States v. Diggs and Camanetti. They were two young men, both from very prominent families in California life and politics. They had taken a couple of girls to Reno and crossed the state lines, and were arrested in Reno. They were on a lark of some kind, a weekend, and they were prosecuted and convicted. It was probably one of the last cases anywhere that was prosecuted for this type of thing. Although the policy of the government was not to prosecute these cases, the then United States attorney, who I believe was--

Sharp: I.M. Peckham?

Wollenberg: Oh, no, no. This was long before Peckham. Peckham came after Hatfield. This was John McNab. I think he had been United States attorney at the time. I'm sure of it. He said he was going to prosecute it, regardless, and secure a conviction. The U.S. went to the Supreme Court and won.

Sharp: Did this kind of case leave some sort of notoriety about the northern district?

Wollenberg: Not that I recall. Maybe if the defendants hadn't been from such prominent families, and the feeling that pressure from family or status or something of that kind entered the case--I don't know, it might have been different. I had nothing to do with this case.

Sharp: I wanted to talk some now about Prohibition. I had done some research, enough to find out that San Francisco really protested against Prohibition.

Wollenberg: Yes. San Francisco was not a dry town, ever.

Sharp: As much as anybody tried, it was never a dry town from what I could tell. Could you say why you think Prohibition didn't work, at least in San Francisco? Was it economic interest, or just social custom, or--?

Wollenberg: I think it was mainly the feeling of the people. As a lot of people will tell you today, San Francisco today has that same attitude in reference to gays, and things of that kind. It's not entirely lawlessness; you can't call it that, because it's not. It's a protest against perhaps social restrictions of some sort. It's a feeling of the people.

Sharp: Could you describe just generally what the prosecution of Prohibition violators was like, and then we'll talk more specifically?

Wollenberg: There was a special force of Prohibition agents, liquor agents, alcohol beverage enforcement people, who, through the use of undercover agents, would go into places like restaurants and soft drink bars, where there were supposed to be soft drink bars, making purchases, and consume them on the premises perhaps, and come back and get another. They would go around and buy, if they could, from people who had available bottled goods. The people in the business would be in any sort of a business: beauty shops, barber shops, grocery stores, or anything might be in the business of dispensing alcoholic beverages. They would try to

Wollenberg: make a buy that could be prosecuted. If you had possession, that was another crime--just possession of a beverage. It covered the whole gamut of alcoholic beverage, from beer, wine and stronger spirits as well.

The cases would then come through the U.S. commissioner's office and be prosecuted.

Prohibition: Prosecution of Violators

Sharp: What was your role, then, in the U.S. attorney's office regarding the Prohibition cases?

Wollenberg: I had very little to do with them, except insofar as there might be in my responsibilities--some of them--to see that they were calendared and on the calendar. I had practically nothing to do with the prosecution. Court assignments were such that I never did have any that I was assigned to work on. I did more civil work and criminal work by assignment to certain cases. I assisted other people during prosecution and so forth.

Sharp: Let me just ask you a few more questions. I did find Mabel Walker Willebrandt's book.

Wollenberg: Oh, you did?

Sharp: Great book! She certainly had her own point of view.

Wollenberg: I haven't seen the book in, I don't know--years!

Sharp: I'll have to bring it to you. It's called The Inside of Prohibition.* She was pretty critical of federal enforcement of prohibition.

Wollenberg: Oh, yes. She was the baby of the dry people.

Sharp: She said she spent most of her time prosecuting the prosecutors.

Wollenberg: I guess so.

Sharp: She mentioned various agencies, like the Coast Guard and the Prohibition Bureau in Washington, and others that were supposed to try to help each other find violators and prosecute violators.

*Indianapolis: The Bobbs-Merrill Company, 1929.

- Sharp: I wonder if you would remember what sort of contact the U.S. attorney's office might have had with some of these different agencies.
- Wollenberg: Of course, the U.S. attorney's office is the prosecuting agency. They make the decision whether to prosecute that case in court under the federal law--it's the same statute, I believe, without any changes. The only thing that would make it other than the full discretion would be subject to review, of course, of the attorney general, because the United States attorney is part of the apparatus of the Department of Justice and the Attorney General of the United States. The U.S. attorney has to take that decision to prosecute up and determine through the policies of the administration as determined by the attorney general.
- Sharp: Willebrandt mentioned that there was some problem of a lot of people trying to do the same thing, and nobody doing it terribly well.
- Wollenberg: Well, you always have that when you have a multiplicity of agencies. It's the old bureaucratic problem of one agency, if there's any overlapping in their functions with another, there's rivalry and jealousies, and the attempt to do it all yourself and not use a cooperative agency.
- Sharp: In San Francisco there was the overlay of the problem of the city not being terribly interested in prohibition anyway.
- Wollenberg: That's true too.
- Sharp: Do you remember what kinds of contact the U.S. attorney's office might have had, say, with the city and county supervisors?
- Wollenberg: No, I had no business with them. We never had. The police department was cooperative with federal crimes, like bank offenses, post office robberies. There was a train robbery case of Ellen Ellis. The local sheriff's office in Alameda County was always in the case to cooperate. Contra Costa County, too, and San Francisco County as well.

They were interested in one of these people--Charles Berta. San Francisco was interested in finding him for a payroll robbery on the waterfront in which a police officer was shot and killed. There was cooperation generally speaking, very well.

In those days, FBI agents--that assist the Federal Bureau of Investigation--were unarmed. They didn't carry weapons or anything. If they were going to make an arrest on a dangerous case, they always sought out the local police department to come along and be the armed people that were involved in it.

Sharp: There was some report that by the mid-thirties, say 1933 anyway, the federal court judges in San Francisco were throwing out some of the petty Prohibition cases.

Wollenberg: That's right. There were so many filings at one time, that the calendars were just completely overloaded.

Sharp: How did you deal with that in your work in trying to straighten out the calendar?

Wollenberg: Sometimes the court would bring a visiting judge in. The judges were screaming that there were too many cases being filed, that they ought to make a stricter policy--not just go into any restaurant. If somebody had a thing to do with liquor in a good restaurant, it would be served in a black coffee cup. We'd go in and grab them, and find that there was a little wine in the cup. It might be a party of people who had brought their own wine, which was illegal to do, of course, or who had purchased a bottle of wine when he said, "I've got some good wine." The party would say, "That's okay; a little wine with our dinner." Then agents would come in and arrest everybody and bring them in. Cases of that kind were brought in and handled.

The policy was for a while not to prosecute them; to tell the agents not to bother bringing all those people. Agents were told, "Bring in the people who sold the wine, and were the violators and distributors of the wine."

Same thing you hear about marijuana today--screaming about finding somebody with a little quantity of imported marijuana.

That's always the case when you're in that kind of law enforcement business. Somebody has got to use discretion, and decide what kind of cases you're going to prosecute. You're not going to waste time and money prosecuting.

Sharp: San Francisco was in a very interesting position geographically, because, from what I understand, much of the liquor that was in San Francisco during Prohibition was imported, and a lot of it came from Canada.

Wollenberg: Yes, a lot of it came down the coast.

Sharp: Even that the Canadian government sometimes supplied their own merchant marine to transport the liquor, at least that's the information that I had. One of the companies was Canadian Consolidated Exporters, Ltd. of Vancouver.* Does that company ring any bells?

*See Elizabeth Anne Brown, "The Enforcement of Prohibition in San Francisco, California" (MA thesis, UCB, 1948), p. 21.

- Wollenberg: Not with me. I didn't take part in any of those liquor import cases.
- Sharp: I wondered generally, in terms of your work in the U.S. attorney's office, what the work split was between the U.S. attorneys and the assistants?
- Wollenberg: We had assignments. We handled bank cases. For instance, I had the prosecution of bank cases--that was my assignment. That would be bank employees' embezzlement cases, false entries in books, and things of that kind which involved federal statutes. We had authority from the U.S. attorney to go ahead and make our decisions. He'd support you if there were any questions about things. The daily work of the prosecutor was to prosecute.

It was based on discussions, of course, of office policy with the chief. We had a chief deputy United States attorney as well, and either one of them were always available for consultation, if you just wanted to go talk to them. There was never any problem in communication. It was small enough. It was very easy.

Office Policy: Duties and Cases

- Sharp: How do you learn about all of this office policy? Was there someone when you came who said, "Okay, Mr. Wollenberg...."
- Wollenberg: We had office meetings going along all the time. If there was a question of policy involved, you'd just inquire and find out about what the office wanted to do, or was going to do, or had done.
- [end tape 1, side 1; being tape 1, side 2]
- Sharp: Tell me more about some of these cases that you were assigned to, especially if you remember one specific case that really stands out besides the Ellis case. Then we'll get on to it.
- Wollenberg: You're now interested mainly in the criminal cases?
- Sharp: Yes.
- Wollenberg: I mentioned before the white slave cases. We always had a few of those involving the very young girls of say twelve, thirteen, fourteen years old. They seem to have made a new category for that, calling it crimes against children and so forth. In those days, of course, they were only interested under the Mann Act; it was only interested in taking care of the female. The male was not protected.

Sharp: Was this for prostitution purposes, or--?

Wollenberg: Yes, mostly they would transport them across and around the country. By the same token, every now and then the immigration service would go after the Chinese, who would bring the so-called Chinese brides in, who were very young women.

Sharp: Did you work with these cases?

Wollenberg: There would be an occasional one of that type. They were called brides because they were usually brought in as somebody's wife; that was the way they'd get them in through immigration services. They'd have what would be a complicated business to prove the wedding, and so forth, and lack of wedding or something of that kind. Anyway, that would be under the immigration laws, a prosecution of that kind.

There were other matters of the bank cases, mostly embezzlements and false entries. There was a brokerage house here in San Francisco where a couple of bank employees were in cahoots with a branch manager of the brokerage house. This was right after the crash in 1929, and the stock market had had a terrific run on everybody and everything. We prosecuted quite a large case at that time. It was not a successful prosecution, as far as top people were concerned. The bank employees involved were tried and a couple of them convicted. That case took a good deal of time.

There's a rather amusing incident in that case. An FBI accountant, who had done most of the work on the books and records of both the brokerage house and some bank records, and who was a real key witness in the whole thing--there was a tremendous mass of records--a few days before the case was to go to trial proceeded to resign, and demanded to have an expert employment rather than to work as an agent.

When that happened, I went into the United States attorney, Mr. Hatfield, that morning early, the minute he came in, and I told him. He hadn't heard about it. "What are we going to do about this now?" he said. He took the telephone off the desk. We had a switchboard in the office and Kitty Grimshaw--can you imagine I'd think of that name?--was the telephone operator. He said, "Kitty, get me Hoover." (Meaning he wanted to talk to J. Edgar Hoover, the director of the FBI.)

He grabbed the phone down when she rang back, and said, "God damn it, Hoover [Wollenberg slams desk], your agent--" and he started in and he gave him hell--just excited, and didn't stop for a breath even. I was sitting across the desk, just like you are. All of a sudden, he deflated. "Oh," he said, "Mr. President, I'm so sorry! I wanted to talk to J. Edgar Hoover!" [laughter]

Wollenberg: So can you imagine? In those days, all you did was take the telephone down, and if you had the number, you'd get the president of the United States and he would answer the telephone.

Sharp: How did Hatfield get out of that one?

Wollenberg: It seems understandable. President Hoover was an understanding person. I think he said to him, "It sounds terrible to me. If you need my assistance, you let me know."

Sharp: How did that all resolve?

Wollenberg: Well, we went ahead with the trial. They did have to employ this man and pay him so much a day for his testimony, because we had to have him on certain records. He held up good. I couldn't go into detail now; I haven't thought about it in so many years.

Still and Swill

Sharp: You told me when we were talking in the beginning about Prohibition that there were so many of the small cases and so many of the small people seemed to be the ones who ended up getting prosecuted. Now you've just sort of alluded to it again.

Wollenberg: In Prohibition cases, it's always the difficulty in that sort of thing of getting back to the movement. I don't know that I was unfair to small people; that's where the volume is. It's like distribution of anything. When you get down to the ultimate consumer, it's usually in small quantities for any individual consumer as against large producers. So that's all part of it.

They did have and did get a lot of local stills, just like they did ever since we've had a tax on liquor in the United States. You've heard the old stories about the still people in the mountains of Kentucky or Tennessee or someplace. We had them all around here.

There were stills--quite a few big producing stills--that were raided and knocked over and destroyed and people prosecuted, and successfully, some of them; some not so successfully, I guess, right in the area. Outside of San Francisco, in Colma, down on the peninsula; outside of Oakland, back towards what's now Fremont and that big area. There were hog ranches, people who were in the business or raising hogs. Hog ranches were used for the disposition, mainly, of garbage. The garbage was collected--slops, as they called it--hailed out and fed to hogs.

Wollenberg: Where you have hog ranches, you have odor, you have a smell. Sometimes on a hot day, it'll go for miles and miles. You'll smell a hog ranch with just a few hogs, if it's a hog ranch that's feeding garbage, that's feeding swill. They made a great protection for stills, because stills have an odor. When they're running, you can smell them for miles. That was the way they used to go down through the countryside or where they thought there were some. The agents sniffed the air like good dogs, you know, sniff the air and then follow their nose to the still. The hog ranch was the favorite place.

So that would sort of disperse the odor. Agents would end up at a hog ranch, and they couldn't find the still. It would be well hidden close by, but it'd be well hidden. They wouldn't have the proper cause to enter the land--search and seizure questions were still there in those days--and they couldn't just go barging in on private property. They had to be able to testify that as they went by they smelled directly the odor of mash fermenting, which has a peculiar smell of its own. It's a legitimate reason. They would smell the mash, and then would go to the still.

These stills ran mostly with sugar--sugar for fermenting in the basis of it. So they used to follow the sugar trucks. If a big truckload of sugar came around and started down the highway, the agents would trail that sugar until they got the odor of mash somewhere. Then adding the fact that a truckload of sugar went into the premises, and they smelled mash, and so on, they'd get a search warrant and go in.

There was always the problem, as you asked, of the little guy as against the operator. You don't get the big shot who really owns and is operating that around a hog ranch and the still. When you go in and make the raid that way, you're just getting the laborer who's there working on the still. There's no question; you don't get the top people. You try to get them; you try to have these people make a statement and tell who they're working for, but they never do.

Sharp: Was there a certain group of people within the U.S. attorney's office who were specializing in trying to track down the more well-known still operators?

Wollenberg: The U.S. attorney's office did not have an investigating arm. It had to take what it could ask for for investigation after the thing started; but the enforcement of all these laws was in the hands of--as you said, from reading Mabel Walker Willebrandt's book--certain agencies whose business it was to go out and do that.

Wollenberg: The Treasury Department, since time immemorial interested in the collection of taxes, has always been after liquor stills and so forth. That department still existed and was after them. That's part of their work, as well as the Prohibition agents, but those are two separate agencies. I don't recall any incidents, but cooperation between them was difficult. They were on a different basis, probably didn't trust one another.

The Wickersham Commission

Sharp: You mentioned, when we talked before, about the Wickersham Commission. I found a copy of the report, and it was this great, voluminous document, five volumes or so.* I didn't read it all--

Wollenberg: No, no, I hope not!

Sharp: Anyway, I was interested to see that California was not reported really: the commission members or their representatives apparently went out and went to all the different states, and then wrote up what they thought was happening regarding enforcement of prohibition. California was sort of invisible.

Wollenberg: It seems to me that Mabel Walker Willebrandt was on the commission, wasn't she? Or was she an employee of the commission?

Sharp: She was assistant U.S. attorney general at the time--

Wollenberg: Yes, and assigned to the work, I think.

Sharp: She wasn't actually a commission member, though.

Wollenberg: No. That's correct.

Sharp: You told me that you thought that certain members came and did a survey?

Wollenberg: I thought she came out here and did it with certain people.

Sharp: Did she talk with you?

*Its actual title was the "Report on the Enforcement of the Prohibition Laws of the United States," published on 7 January 1931 as H. doc. 722 (71-3) 9361, by the National Commission on Law Observance and Enforcement.

Wollenberg: No, she didn't formally talk to me. I remember she came in to the office several times.

Sharp: Did she talk to Mr. Hatfield then?

Wollenberg: I'm sure she did.

Sharp: And just tried to find out what prosecution was like?

Wollenberg: Yes. She knew pretty well from her job as an assistant attorney general. She tried some cases in Washington, I think, some prominent cases--or in the East somewhere. I don't know that it was in Washington, but on the East Coast.

Sharp: Essentially, the commission's report said that prohibition wasn't working, that the amendment and the Volstead Act and all the enforcement business, didn't stop people from drinking.

Wollenberg: That's right.

Sharp: I guess that was pretty obvious from your work. They recommended that a few changes be made in the Eighteenth Amendment to somehow make prohibition better enforced. I just wondered when that report came out, if in your office people thought the report was right, or what they thought should be done about it?

Wollenberg: Well, I don't recall anything about it. I know that we discussed it. It received, it seems to me, a good deal of space in the papers initially. The newspapers reported on it, and they quoted people on it and everything. But I don't recall that it concerned us more than the fact that we talked about, generally, more enforcement.

Sharp: One of the things that the commission talked about was the fact that in some states there was no state act to enforce prohibition. California did have an act--

Wollenberg: California had a local act.

Sharp: --and yet, in California, from what I've seen in other sources, the U.S. attorney's office and the federal enforcement agencies had to do more enforcing than the state or the municipal.

Wollenberg: That's right.

Sharp: How did that work in your office?

Wollenberg: It didn't have anything to do with us at all. We just went ahead with our work. It didn't bother us or otherwise, because the state courts were prosecuting under the state statutes and so forth. It wouldn't be part of our job at all.

The Depression and Prohibition

- Sharp: I wondered what you thought the impact of the Depression was on prohibition?
- Wollenberg: I can't say whether it made anybody drink any more than they would have otherwise. A lot of people jumped out of windows, and things like that. So I suppose if they go to that extreme, they might go to the bottle first, I don't know.
- Sharp: Was there any impact on the enforcement?
- Wollenberg: By the Depression? There was always the enforcement agencies, the people charged with enforcement were always screaming, "Why are you not giving us the money to hire the men we need to do this, we need to do that, we need to make a budget."
- You'll always find that; that's part of a bureaucratic philosophy to get more and more. But I don't think that other than through what Congress may have wanted to appropriate for enforcement--they did pretty well by the country on the whole by law enforcement, because I think the drys in America had a terrific political impact on the country.
- Sharp: Even just to get that Eighteenth Amendment passed--
- Wollenberg: Oh, sure. Look what it took to do that.
- Sharp: Look what the ERA [Equal Rights Amendment] is going through now.
- Wollenberg: Sure, and how fast that went through. As well as passed the Volstead Act under the amendment. You found there were lots and lots of politicians in the country who were dry politically, but not personally.
- Sharp: Do you think if you had had twice as many people in your office that twice as many cases would have come through?
- Wollenberg: No, I always felt, and a few of us felt, that we could run that office with the business that we had. No, we didn't need more people in our office. As to the field agents--I don't know anything about how they would have strengthened it. There seemed to be plenty of them.
- Sharp: There were. In northern California, it was about thirty-two in 1947.*

*Brown, "The Enforcement of Prohibition in San Francisco, California," p. 10.

Wollenberg: Of different agencies?

Sharp: There were thirty-two Bureau of Prohibition agents. It was their only job.

What was the impact of the Depression on the U.S. attorney's office in general?

Wollenberg: I don't think there was anything in general you can say was an impact. We might have found some embezzlement cases, like bank cases, bank embezzlement among employees rising a little bit. But in those days, I don't know anything about today, so I'm not commenting on today, the banks paid so poorly, a teller, or a vice-president of a bank, who was in a branch of a bank, got such poor pay and was expected to be such a big guy in his little local community that he could get in trouble when there was a sickness in the family.

Sharp: It was a temptation.

Wollenberg: It was. It was a temptation. There was no way of assisting for emergencies that exist today by employers and so on. There was no such thing as health policies, or medical policies or anything like that. There was always a problem.

Sharp: Did the Depression change your own view and your wife's very much?

Wollenberg: It didn't very much, because we were not way up to begin with and had to come down. I was at that stage in life in a practice. Everything was very small and modest. My salary at the United States attorney's office was just about one of the better positions. I got \$333 a month, with some odd cents, and that was my salary. We lived very well on that. We didn't have any problem.

Sharp: Did your wife work outside the home?

Wollenberg: No. No, we had children.

Sharp: How many children did you have?

Wollenberg: Just two, but we had one over this period, and then another one.

Sharp: It sounds like a pretty lively time.

Wollenberg: Yes!

Prosecution of the Ellis Cases

Sharp: Now I have lots of questions about the Ellis cases. I thought we might talk about them for pretty much the rest of today's session, and then I have some just general questions.

My first question is just how you initially got involved in the cases.* Were they just one of your assignments that came up?

Wollenberg: Yes. That's all; it just came on, and I was more assisting. I was not the principal lawyer in any way at all on these cases, as you see by your reading. There's no reference to me, I don't think, anywhere.

Sharp: No. Just to I.M. Peckham, the U.S. attorney for the prosecution.

Wollenberg: Well, that was later, in the last case. That was the--

Sharp: The Nobel-Alameda County one?

Wollenberg: Yes. The first one I was more active in; I had very little in that last case.

Sharp: Tell me about your activity in the first one, then.

Wollenberg: I had had, as a general assignment, the Post Office assignment, post office crimes, I think that's how I got into it. The Post Office agent, George Austin had charge, and then later Frank Spencer came into it, and then Archie Imus from the Post Office Department. I worked with them in the preliminary stage right from the very beginning, in preparation. Then came in men from, I mentioned before, the National Automobile Theft Bureau, which is not a public agency, but one run by the insurance companies. I don't think it exists anymore, but they used to maintain a theft bureau to trace stolen cars and so on in the country. They had some good resources to check the getaway cars in these cases.

The Secret Service was always an interested part of it, because the Federal Reserve Bank's money had been stolen. Of course, the Post Office Department, because it was stolen from the mail. The train robberies were robberies of mail cars on regular trains.

*See San Francisco Examiner, 1 December 1930, for information on these cases.

Sharp: You mentioned too that the Special Agent's office of the Southern Pacific was of course involved.

Wollenberg: That's right.

Sharp: Daniel O'Connell is pretty legendary.

Wollenberg: He is.

Sharp: What was he like?

Wollenberg: He was a real colorful--big, tall, handsome, raw-boned Irishman, who was afraid of nothing and had been in all kinds of situations.

[end tape 1, side 2; begin tape 2, side 1]

Wollenberg: Agents were not hampered by too much of the restrictions on policemen, public police officers, regulations and so on. They would wade right in on any situation. In those days, I guess, the company made ample provision financially for that department, because it was a very successful department in criminal enforcement.

This department of the Southern Pacific had also been involved, you know, in the old graft trials here in San Francisco--Ruef, and the Schmitz period that you've heard about.*

Sharp: Would you have worked with Mr. O'Connell himself?

Wollenberg: Oh, yes. He came in and out himself, and his agents. He didn't have so many agents that he wasn't a very active man himself. He was a good man to consult with when there was a situation as to what might be done, or what leads to follow, or he was advising both the Secret Service with the Southern Pacific agents, and the Post Office Department with the Southern Pacific agents. The Southern Pacific were the actual people who carried the mails.

Sharp: You mentioned that you had to go to Canada.

Wollenberg: Yes. We went up there--a couple of post office inspectors, secret service agents, local people (Contra Costa County)--because we thought the man we were after, Charles Berta, was the man they wanted for a murder: a killing at the time that the bank in Rodeo had been held up. There had been a shooting there, or a killing. Their theory was that one of our people, a man we were looking for, was the man they wanted for that.

*Wollenberg here refers to Eugene Schmitz and Abe Ruef who were convicted in graft trials in San Francisco between 1907 and 1908.

Wollenberg: San Francisco County was interested because they thought that same man was the man they wanted for this waterfront payroll robbery. It was Berta.

You know, you might have a lot of fun interviewing him.

Sharp: Oh, he's still around?

Wollenberg: He was a bartender for years and years after he was paroled, down on 7th Street, near the Greyhound Depot. I don't know whether he's there now, or gone, or dead or alive, or what. He must be as old as I am.

Sharp: I saw that it was Edwin Sherwood who had gone up to Seattle.* Was he the man that you were looking for?

Wollenberg: He was the lead man that we were looking for, but then we discovered Berta was up there. That's where Berta was taken, in Seattle. He had come back across the border.

Sharp: Were you involved in apprehending Mr. Berta?

Wollenberg: I was in Seattle at the time with these agents. I was not out on the street when they apprehended him. I was in the hotel, waiting for a call from them.

Sharp: Were you involved when Mr. Sherwood was apprehended?

Wollenberg: No, he was apprehended later, by the, I think, Seattle police. I was not up there then. But, we had travelled through western Canada for about ten days with these United States agents, and with two or three agents of the Northwest mounted police. They joined us as part of the party, guided us to where we wanted to go. They were very cooperative, very nice people to be with.

Sharp: I see on one of the notes written up here that there were 211 witnesses.

Wollenberg: I don't know. I can't imagine using all 211 witnesses.

Sharp: 185 pieces of evidence.

Wollenberg: Yes, there was a lot. You know, somebody wrote--O'Connell or somebody--a manuscript about that thick. [gestures a few inches] Did they have that at SP? It was later condensed and published in one of these paper magazines--the story of this thing. I don't know that O'Connell did it, but somebody at the SP wrote it up.

*Interviewer researched old files of Southern Pacific Railroad for this information on Ellis cases.

- Sharp: No, I didn't see anything like that. That would be interesting to find.
- Wollenberg: Maybe it was taken out of there.
- Sharp: Once everybody was apprehended, and the trial was beginning, what would have been your role in the courtroom?
- Wollenberg: I'd have maybe been interviewing witnesses, and talking to the agents and the other witnesses, marshaling evidence and things of that sort, and perhaps taking it to a witness or two. As I recall, in the later trial--I didn't have anything to do with it after that.
- Sharp: Do you remember talking to Ellen Ellis at any time?
- Wollenberg: Yes. I remember talking to Ellen Ellis in my office the morning after she had been brought in. She was brought in to the office, and she had been in jail. They told her just before she came in that her husband had been killed in the thing. She told them she didn't believe it, they were lying to her. So they took her to the coroner's office, showed her the body. She looked at it and said, "See, I told you that's not my husband. It's not him at all. You've been lying to me all down the line. You haven't even got my husband." Well, it was.

Then they brought her over here, and I was trying to find out from her what arrangements she wanted to make for the funeral, for the disposition of the body. She was sitting in the room, and I explained to her that's all I wanted to know. There would be nothing held against her. If she buried him, it wouldn't mean that he was her husband, and would not be used in court. The remains otherwise would go and be disposed of in the potter's field or whatever they called it. If she wanted a funeral, and wanted just to be nice to take care of this stranger's body, she could do it. I would get in touch with someone who would get in touch with her, or anyone she wanted. She could do all that.

She would not come to recognize any of it. I can remember one instance--I offered her a cigarette, and she took one out of my pack, and I took a cigarette. I lit the match, and I held it over her with my hands like this, and she swung and hit my hand. She says, "Damn it, don't you be nice to me! Gimme the matches. I'll light my own cigarette." I can remember that incident quite well.

She never admitted anything. She was taken out and taken back to jail. She sent word then that she didn't want to name anybody, but she wanted to talk to one of the undertaking places

- Wollenberg: downtown. We put them in touch with her. She mentioned to them what she wanted. He went to the jail to see her, and he took care of the whole thing. They asked her if she wanted to go back and see the body or anything. They would have taken her back to the undertaker's. She said, "Never. It wasn't him." It wasn't her husband. She didn't want anything to do with him.
- Sharp: From the file that Mr. Adams got for me, it seems she had a pretty rough life very early.*
- Wollenberg: Oh, yes.
- Sharp: She came from a broken home, and I think she married Ellis when she was sixteen years old.
- Wollenberg: Oh, yes. He controlled her life completely. It was back in some hill country, wasn't it, in the Middle West?
- Sharp: Actually, I think she was born in Washington, and then the family moved around. Her father died, and her mother remarried. She didn't get along with her step-father, and that's why she left.
- Wollenberg: She did a long stretch in prison down there. It was a long time before she got out.
- Sharp: It's interesting. The whole parole record is there, and a lot of it's in her own handwriting--telling about her life, and what she'd done. She had to write back and give all these reports of what she was doing on parole. Did you ever see her later on when she came back and lived in southern California for a while?
- Wollenberg: No, I didn't see her at all.

The War Risk Insurance and Other Cases

- Sharp: In your cases as assistant U.S. attorney, were you primarily involved in prosecuting somebody, rather than defending?
- Wollenberg: Yes, except in civil cases. I handled a great many civil cases, like the war risk insurance cases. They were in volume. I tried a great many of them. I tried contract cases for the National

*William Adams of the federal Probation Department provided biographical material on Ellen Ellis for the interviewer.

Wollenberg: Park Service. They were doing a lot of work in Yosemite in those days. Once in a while there'd be a dispute with a contractor. I used to like that: I'd go up to Yosemite and inspect a job, and then come back and try a case against a contractor or something.

Sharp: What sort of contracting were they doing?

Wollenberg: Bridge building. I can remember one bridge, and the architects of the department who were handling it were all very particular to keep it rustic and natural rock and all of that so that it wasn't a travesty affair. The architects were working like the devil trying to make them build houses, quarters for the help, and the rangers, and all of that.

Sharp: Were those pretty interesting cases?

Wollenberg: No, they were the run of the mill small cases. They didn't have any great interest, except they involved the contractor who had not fulfilled his obligations or something of that kind. We were holding up the money, and they used to sue the government, or something of that kind. Or he'd gone broke, and they would have to bond to finish the job, or get somebody else to finish it, and they'd sue the bonding companies.

Sharp: What were these war risk insurance cases that you mentioned?

Wollenberg: Well, in World War I, and in II everybody who went in the service could purchase a \$10,000 policy of life insurance. That policy, after they were discharged, they could keep up by paying a very modest premium. You couldn't buy private life insurance for what that was. It provided for the payment upon total permanent disability as well as death.

People would let it lapse, but it would date back years before. They'd say when they were discharged they were so sick that they were really totally and permanently disabled, that they were unable to do anything since, and that they were entitled to the \$10,000.

There was a great deal of litigation on that. A lot of them had to do with pulmonary tuberculosis, for example. They'd claim they had tuberculosis, that they had the start of it when they were in the service, that that's when they got it, and they were really totally and permanently disabled while the policy was still in force. If they were, then they could collect.

There were nationally a lot of cases. Again, San Francisco was very liberal. The juries would sit and say, "Oh, yes, this guy was in the service, poor guy." In those days, they'd do

Wollenberg: anything for veterans, and they'd win a great majority of the cases. They were in the hands of just a few lawyers, as plaintiff's lawyers. There was only a handful that had them. The lawyers were veteran politicians, most of them--American Legion politicians, and so on--and the lawyer, under the federal law, was entitled to a percentage. Their fees were set, and they received a fee based on the percentage of their recovery, and for the rest of life. You see, it would be more if it were for total disability, and he was a young man. Ten thousand dollars would run out very soon, but he'd still get paid for the rest of his life under that policy. The lawyer would get a few bucks on each payment. With each monthly payment, there'd be a check to go to the lawyer, for the rest of the life of the insured. So if the lawyer could get a volume of those cases, he'd be making good money.

I tried a great many of them. Later on, we were getting so we could win them. We had a dickens of a time getting them properly prepared by the Veterans Bureau, because they were swamped with all kinds of things. We'd get these cases, and you'd get dragged into court on them before you were even ready, before you could even have the Veterans Bureau supplying you with the information.

Sharp: How did that change around? Why did you start winning them then?

Wollenberg: We were preparing them better. We got to the point where we had people assigned directly to the office from the Veterans Bureau as investigators. We had specialists in certain fields where we could interview them, we could call them up and make an appointment. I had their assistance in preparation, and not just depend on reading the records alone without being informed about them. We'd send the record over to the doctor and make an appointment, and he'd tell you all about it.

Sharp: Was that the beginning of changes in evidence? Talking about the expert testimony of doctors--was that sort of a new thing to get doctors to do?

Wollenberg: No. Medical cases were not in great volume in those days, but we would use doctors as experts. It was used in courts in many cases. So you can't say it was the beginning, but it was of the volume of cases they were used in.

Sharp: Did you always have to worry about the juries then? You said they were very sympathetic to veterans.

Wollenberg: Yes, they were very sympathetic to veterans. In picking a jury-- you didn't have very much choice, you had to take what was there. Of course, in juries in this district, at that time there were no women on juries in the federal court. The jury lists were made up from the mens clubs. The jury commissioner at that time would go to the club's list, like the Bohemian Club, the Family Club, and the Olympic Club, Pacific Union Club, Concordia Club. Those were the five of them. The commissioner kept a roster of the clubs, and then would just select the names. He put them in the ballot from those clubs, and that was it.

Sharp: You're kidding!

Wollenberg: No, sir. That's what they used to do. For years, that was all that was done.

Sharp: As a young lawyer finding out about that, what did you think?

Wollenberg: Oh, it was terrible! There was no cross section of the community. I don't know that anyone can point to any great injustices that were ever done. I never heard of any. They acquitted an awful lot of cases, just as anybody else would, in those days.

Sharp: Why were there no women on the juries?

Wollenberg: Who paid any attention to women back then? I mean it--there weren't any requirements. They were not there. There were not under the court throughout the country any women on the juries, until much later. It may have been in a few states that they were beginning to be called, but just beginning. They were just beginning to be called in California in the state courts a little after that.

Sharp: In this period there were few laws governing jury selection?

Wollenberg: That's right.

Sharp: I'll look up some questions on jury selection, and we can talk about that all the way through your career, because I'm sure that obviously that came up quite a few times.

Back to Private Practice: van der Zee and Dunnell, 1934-1938

Sharp: I wanted just to ask you just a few more questions then. Why did you leave the U.S. attorney's office in 1934?

Wollenberg: I'd been there long enough. It was no place to make a career. I was there a total of six years. I didn't leave until '34.

Sharp: You went into practice then with Herman van der Zee.

Wollenberg: Yes, and Leo Dunnell.

Sharp: How did that practice differ from being in the U.S. attorney's office?

Wollenberg: Well, this was a private practice. We had all types of cases in general practice. We were on our own. We were not working for Uncle Sam, where you could call up the Secret Service or somebody else, and tell them to go out and get you some evidence. You needed this and that and the other thing.

Sharp: Were there certain cases that you worked on in the private firm that were quite typical Depression cases?

Wollenberg: I really don't think so--only to the extent that the business cases you had were cases in which people were trying to collect money, and the people you were trying to collect from you had to be patient with, because they weren't necessarily trying to get out of the bills, they just were unable to meet them.

The law business during a depression, if the lawyer can get paid, is usually very, very good. He may have a little trouble getting paid right away, quickly, or something like that. Like everybody else does, he has to wait in line and be patient. But, commercial business becomes pretty good in a depression time, and there's plenty of work to do.

Sharp: I would have thought that would have been sort of precarious, to leave a sure situation, to work in private practice.

Wollenberg: Well, I know. But when you're young, you figure you can go out and do it now, or you're not going to do it. If you stick around too long, you just won't do it. I tell these young people that work around these courts, I say, "If you want to make a career of it, that's one thing. But, you must be satisfied that you might get to the point where if you're going to go out, you better make up your mind, you better make that change, regardless of what you'll suffer for it for a little bit. Don't just hang on."

Sharp: Which did you like better: working in the U.S. attorney's office, or working with van der Zee and Dunnell?

Wollenberg: Oh, I liked them both. I can't say that one was better than the other; but those were all fine experiences.

Sharp: Have we not talked about something in this period that you'd like to discuss?

Wollenberg: I don't think so. The Prohibition era--the little bit I know about it was sort of it. The cases were not, I don't think, as complicated then. Certainly we didn't have the volume of business in the courts then that we have today--I mean by that the variety of cases.

Congress has put into the federal courts anything that they think they want to do something about. They'll pass a law; they'll turn over most of it to the court to do something about; and then scream about the courts not working fast enough. But, that's my observation on it.

[end tape 2, side 1]

IV YEARS ON THE SUPERIOR COURT OF SAN FRANCISCO, 1947-1958

[Interview 2: July 23, 1980]

[begin tape 3, side 1]

An Added Note on the Appointment

- Sharp: I noted in the last set of interviews that you did with Amelia Fry that when she was talking to you about your years in the California assembly, you mentioned that Earl Warren had appointed you in 1947 to the superior court in San Francisco.* You apparently were the first legislator that Governor Warren had appointed.
- Wollenberg: I was, yes.
- Sharp: Did you know that when he appointed you?
- Wollenberg: Yes, I think it was known that he hadn't appointed anyone else from the legislature to the courts.
- Sharp: In that last interview, you did tell how the appointment came about; but I wondered if you had thought about being a judge before this time?
- Wollenberg: Well, I guess I'd thought about it, surely. I hadn't done anything in an overt nature, like request it, or anything of that kind. I had mentioned to some of my friends that I was not going to stay with the legislature any longer. I'd been there long enough, and I didn't see any purpose in remaining there; it was taking too much time from my practice and my family.
- Sharp: Is it a fairly complicated process to become a superior court judge?

*See pp. 156-158 above.

Wollenberg: Not really at all. The governor, after satisfying who he intends to appoint, usually requests the bar association of the area in which the appointment is to be made for comment on the individual. Anything they wish to send in, they send in. He waits on that. I don't know of anything else that he does. That's an assessment of what Governor Warren did.

There is no confirmation provision. There wasn't at that time, and I know of none now.

Sharp: That's what I thought. I did see a note that Jesse Steinhart was the master of ceremonies at the time that your oath of office was given. I wondered if you remembered anything special about that occasion?

Wollenberg: We sort of followed the format of all the inductions of judges around that time. It was held in a courtroom, down at the old Hall of Justice on Kearny Street. There were speakers there; Steinhart acted as master of ceremonies. That's about it.

Sharp: Why was he chosen?

Wollenberg: Well, he was an old, old family and an old friend of mine for many, many, many years. I had great respect for him and his ability, and what he meant to the community of San Francisco. I was very honored, and he accepted, agreed to do it.

Transition: Assemblyman to Judge

Sharp: What was the transition like from being an assemblyman to being a judge?

Wollenberg: Of course it's altogether different. Being an assemblyman is, number one, a political, partisan office; a judge is a non-partisan office. The assemblyman has to represent what he believes to be the wishes of his constituents--I suppose you could put it that way--and his insight into what he thinks he should do on certain issues. He has to consider things on a partisan basis as well as on a nonpartisan one. Whereas the judge, regardless of friendship, regardless of anything else under his oath of office, must do things in accordance with the law.

The assemblyman is working in a legislative body creating the law, whereas the judge must take those laws and interpret them between people, in disputes between individuals. The assemblyman is not concerned with disputes between individuals;

Wollenberg: he's concerned with what policy the law should follow, what the law should state, how it should be drafted, drawn, and so on. The functions are recognized as different. The constitution of the United States provides that they are entirely separate and apart, and distinct one from the other. The legislature has no control over the courts, except they do fix their salaries, or something of that kind, and the number of offices of the courts around the country that are necessary. A legislator or the legislature cannot instruct the court as to interpretation of the law and things of that kind.

Sharp: I would imagine that in the superior court, perhaps your distance from the state legislature might be greater or lesser than the position of a state supreme court and appellate court. Does it seem any different to you?

Wollenberg: No, there really isn't any difference. There shouldn't be.

Sharp: What experiences with judges did you take to the bench from being a lawyer?

Wollenberg: Well, I had experience with judges, as any lawyer would who practiced and had been in the courts occasionally and tried cases.

Then, of course, I had the additional benefit when I became a judge, of having been a legislator. I think that was of great value. I think it gives you a feeling and an insight into people and their conduct, because as a legislator, you have people constantly looking you up, wanting to explain their position on things, and wanting to impress on you how they feel about this that and the other thing. I think it's a great place for training for ability to understand, and to appreciate people and their problems.

You know, when you're in a position, no matter what it is, that gives you a certain amount of power, then you have to learn how to wield that power, how to appreciate that you have the power, and that you could very arbitrary or capricious in the use of the power if you're not careful.

Whereas if you've had some experience, you are better prepared. I think the greatest of all is legislative experience, because there's always something that's controversial, either just gone by, or about to come up, or you're in the middle of it. There are lots of things not controversial that you work on constantly. But, you do learn, and you get the training that you must have to be any degree of success at all as a legislator. You must learn these things, and they stand you in terrific stead if you become a judge. I think that's a very, very valuable training ground.

- Sharp: We can talk about this more next time, because I have a long, long set of questions on it, but I was reading your decision in the State Board of Equalization case. I saw it almost with your years as a legislator in mind, because the case seemed to me to turn on the description of the police power of the state, what it could, and could not do. I did wonder about your years as an assemblyman.
- Wollenberg: They meant a lot.
- Sharp: Did you have in mind, then, any model of the kind of judge that you wanted to be?
- Wollenberg: No, I don't think I had any model in mind. I always believed you have to be yourself, and that's pretty hard if you try to take somebody as an idol or an ideal situation, and copy or pattern yourself. That, to me, is pretty difficult to accomplish without some slips and falls along the way, because your own personality, your own likes, and everything you've done in life all add up to have an influence on your opinions.
- Sharp: Did you have any books, then, that you could read on judging?
- Wollenberg: Well, there are books that have been written over the years, some classics. There's Judge Frank's book. There are others I think, books like The Life of John Marshall, things of that kind. Beveridge's book I liked.* Those things are all helpful and give you a feeling for the law. There are some essays by [Louis D.] Brandeis and [Benjamin N.] Cardozo; there are all sorts of things you can read.
- Sharp: Do you remember thinking that you wanted to read these, or that you must read them in order to understand?
- Wollenberg: I don't think I ever had the feeling I must read them. I think I picked them up and read them from time to time. It would be years before, I guess when I was in college, that I read Beveridge's The Life of John Marshall, and things of that kind. That was years ago, as a law student.
- Sharp: How was it then that you learned the procedures?
- Wollenberg: Well, there are the rules that you have. If you've been to court, you know what a courtroom's like. If you've been before a judge, you know how it operates, what his thinking is, but each judge is different, has his little idiosyncracies. You can never make them all alike.

*Albert J. Beveridge wrote The Life of John Marshall.

Wollenberg: You can't have rules that apply right down hard and fast to everything, because we all interpret some little thing differently. You just do what you can see is your best under the circumstances of what you have before you.

Organization of the Superior Court in San Francisco and
Grand Jury Selection

Sharp: I wondered if you could just tell me a bit about how the superior court was organized in San Francisco when you came to the bench.

Wollenberg: When I came on, there were a great number of judges who'd been there a number of years. There was seldom change there. There were a lot of older judges on the bench--some very able judges, some very well-known. It was organized by the annual election of the presiding judge, as they called it, who simply was the administrative head of the court. Somebody had to administer the general court functions--assignment of cases, the supervision of the county clerk's office, the things of that kind that had to be done, assigning judges to courts and special duties, and so on.

The Judicial Council of the State of California was still in its fairly early days. It had been in existence several years. The chief justice of the California Supreme Court was Phil Gibson, and he was interested in bringing up the efficiency of the courts. The courts generally were beginning at that period to be overburdened with a lot of work, and short on judges. There was some question, with justification, that perhaps the judges were not well enough organized to efficiently operate the courts, and not spending the time that they should on court business.

The younger judges were coming along who appreciated this fact, and we were working to change the situation as much as we could. There were several situations that occurred over the first few years that I was on. We brought about some changes. Selection of grand jury in those days was entirely in the court. We had a system. As I recall, there were some twenty-one or two judges--each one would nominate five. Then a panel from that list of a hundred-odd would be drawn, say, fifty. From that fifty then would be drawn the twenty-four--twenty-six--some number of that kind, people who would serve on the grand jury.

There had never been a black on a San Francisco grand jury up to that time. I believe I was the first one to offer names of two or three black people.

Sharp: How did you decide on the names that you were going to put in?

Wollenberg: Well, in the first place, I had impressions of my own about people that I knew and had contact with. I would ask them if they would be willing to serve if chosen. I had to get their consent to put their names in. I didn't have to, but I mean it was a sensible thing, I thought, to do.

Sharp: Sure. It would be a waste of time.

Wollenberg: There was no use wasting time if they were going to refuse or to say, "I don't want any part of it." I would inquire about people, to try to make at least not just my immediate friends, but find out from friends what people would be able to serve. Get somebody in the labor movement; get somebody in business; and get somebody from the black community. I did that.

Finally, I think, I know, the first black man to serve on the San Francisco grand jury was my nominee. James Glover, his name was. He was the director of the Urban League here in San Francisco at the time.*

Sharp: I have a few questions later on about the use of the grand jury. I had wondered about the relationship between the grand jury and the superior court judges, and the grand jury and the presiding judge of the superior court.

Wollenberg: The presiding judge has charge of the grand jury. That is, they fix the time of meeting once a week. If they have indictments, they report back to him; they come to his court and hand in the indictment.

Sharp: Does the presiding judge also select what issues the grand jury will look at, or investigate?

Wollenberg: No, I never did. He could advise them on anything he wished. He also has the power, I think, to just discharge the grand jury if he doesn't like what they're doing. If he thinks they're acting for some reason that he doesn't like, he can just say, "You're discharged. We'll order a new grand jury drawn in the morning." He can do that. He has great power. I don't know, I think he still has that power in the state system. He certainly has it in the federal.

Sharp: I have a note that you were presiding over the criminal division in March of 1948, and I wondered if that was your first appointment as a superior court judge.

*This may be the Bay Area Urban League.

- Wollenberg: Yes, it was. I was appointed and took my oath in September of 1947.
- Sharp: The presiding judge when you came in of the criminal division was Melvyn Cronin?
- Wollenberg: Yes.
- Sharp: I wonder if you could tell me just a bit about him.
- Wollenberg: Oh, Mel Cronin was also a member of the legislature while I was there. He ran and was elected to the municipal court, and then he was subsequently appointed to the superior court by Governor Warren.
- He was a very conscientious, sincere, hard working individual, that served many, many years on the superior court, and did it very well, competently. And also as a legislator was greatly respected.
- Sharp: Then the presiding judge of all the superior court was George W. Schonfeld?
- Wollenberg: At one time, but just for one year. Did he come in during that period? I don't know when he did. When I went on? When I became a member of the court?
- Sharp: That's what I thought.
- Wollenberg: He could have been. I can't recall the presiding judge at the time that I went on the court. Probably it was George in '47 and eight.
- Sharp: A little over a year later, after you were appointed, you then had to run for election as a judge. I wondered how running for election as a judge differed from running for re-election as an assemblyman?
- Wollenberg: In both cases it's pretty hard for me to say one way or the other: I didn't have any opposition, after my first election as an assemblyman. I did in my first.
- Sharp: Why didn't you have any opposition?
- Wollenberg: Nobody thought they could beat me, I guess. I can't think of another reason.

Wollenberg: Judge George Harris was my opposition for the assembly the first time.* I think we have a lot of similar statements.

A Sample Case from the Criminal Division Bench: Joseph Souza

Sharp: I have some questions about the Joseph Souza case.** I know that it really wasn't a particularly important case, and yet it's one of the only ones that I have very much detail about.

Wollenberg: Yes, it is. It's one of the very few that there's anything on.

Sharp: There was a note in one of the San Francisco Examiner articles about your giving instructions to the jury. I wondered just generally what, as a judge, that was supposed to do?

Wollenberg: The jurors are the judges of the facts. The court is the judge of the law. The jurors must accept the law as stated to them by the court, and those are the instructions.

It's a judge's duty and obligation. He must, in every case where there's a jury, instruct the jury as to the law of the case. He starts right in and tells them what the law is, how they should consider and weigh the evidence, what the effect of evidence of this type is on that, and what the essential elements of the crime, if it's a criminal case, are, that must be proven beyond a reasonable doubt and to a moral certainty, and what those terms mean. And, whose burden of proof it is to do this and that.

In a criminal case, it's always the people's burden to prove everything beyond a reasonable doubt--all the essential elements of the offense. Generally, in every case, such instructions are given.

*For Judge George Harris's own comments on this campaign, see his oral history interview, Memories of San Francisco Legal Practice and the Northern District Court, 1920-1960s, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1981, pp. 91-101.

**Joseph Souza was acquitted of a charge of murdering his mother-in-law, Mrs. Saidi Luchi, in 1949. See articles in the San Francisco Examiner, 17 and 30 December, 1949, for more details.

- Wollenberg: The process for it is that each side, the prosecution and the defense, propose instructions as to what they believe the law to be, and they give them to the judge. The judge goes over them. He can give anything he wants; he isn't bound by just what they've given. Or, he can accept what they've given, and reject what one party says. Then he states what he believes the law is. That's what they appeal from, the matter of law. The appeal would be that he made a mistake, that he gave the wrong instruction, that it should have been different.
- Sharp: You also give the jury the range of--not of sentencing, but of--
- Wollenberg: They're not entitled to that. The penalty is none of their business.
- Sharp: But you do tell them about the differences between manslaughter--
- Wollenberg: You define the crimes, the different degrees, you mean, like in murder: murder first, murder second, manslaughter, negligent homicide, and so forth.
- Sharp: Is this the first time you've really spoken to the jury?
- Wollenberg: Oh, no, you're speaking to them constantly. At the time they're impaneled, they're interrogated in the state system by the lawyer and the judge, who can ask questions at that time. The judge rules, and so on, and he may instruct then. You can give an instruction at that time as to what the law is, what they're to be watching out for in the case.
- Sharp: When the instructions are given, is this the last point before the jury is then dismissed to deliberate the case?
- Wollenberg: It usually is, although some judges now, and in fact, over the years, instructed also earlier in the case. For instance, they'd tell the jury what the issues were, so they could be watching in the interrogation of witnesses for certain things that were important as against unimportant.
- Sharp: The Examiner newspaper article on December 17th, 1949 seemed to point to a rather weak case for Mr. Souza's acquittal.
- Wollenberg: That's what I thought, too, that he should not have been acquitted. I thought it was a first-degree case at the time. As I recall the evidence, he had had this row, and he believed that his mother-in-law was keeping his wife from him. Whether he had any grounds for that or not, Lord only knows.

Wollenberg: But apparently, this was his story in trial, if you were going to believe his story. He went and got this gun, and he stopped on the way out to the house, as I remember, and went into a bar, where he knew the bartender, to ask him to show him how to shoot the gun. He showed him how you pulled back the thing--it was an automatic Colt. So he showed him how to use the gun, and he asked him what he was going to use it for, and he said something about he was going to go out and shoot his mother-in-law or something like that. This fellow, the bartender, his friend, testified to that.

He went out, and they were talking, and she [Mrs. Luchi] was holding the baby. They were sitting in the living room in one of the avenues in the Richmond district--on 20th or something. He pulled the gun out and held it right in her face, and shot her, just no farther away than you and I are right now. She was holding the baby. That was one of the statements made in the newspaper article: why would he shoot if the baby was there? He and his wife the next day went running off like nothing happened after the acquittal.

Sharp: The jury, then, is not a predictable body of people?

Wollenberg: No, that's one of the things, I suppose, with the jury system. I think it's well worthwhile. I'm a believer in the jury system.

Sharp: The second Examiner article written on December 30th, 1949 wrote up a disagreement between you and Pat Brown, Edmund G. Brown, Sr., who was then district attorney in San Francisco.

Wollenbert: Yes, at that time. After the acquittal, he made some statement to the press, and I had refused to comment. I noticed that in the article and I recall that. The case was over, and I had no comment about what happened. I thought that was the end of it, I expected.

Brown did comment, and said that they couldn't get convictions because of what the judges did, because of their statement of the law, and the instructions. As a matter of fact, they had proposed no instructions in this case. The night before the end of the case, I had worked up my own instructions; I had not accepted the defense instructions either, although the defense had submitted instructions. I couldn't get the district attorney; I couldn't locate [Elton] Lawless, who was the assistant district attorney.

So when the press read me Brown's statement, and asked me whether I had a comment, I said, "You bet I have. Right now he's completely incompetent; he doesn't know what he's talking about."

Wollenberg: This case was tried incompetently, and presented. They didn't even offer instructions or anything else on the law. That was published, and that sort of ended the discussion. There wasn't anything after that. That statement of mine was not replied to.

I mentioned Judge Jerome Frank's book, didn't I, earlier? I received a copy of it a couple of days later with an effusive note from Pat Brown, an apology for what he'd said about the courts.

[end tape 3, side 1; begin tape 3, side 2]

Wollenberg: I thanked him for his courtesy in sending the book and the note. That was the end of that. We didn't have any further discussion after that.

Sharp: The example of this case, was that part of huge set of problems that the DA's office in San Francisco had?

Wollenberg: To some extent, yes. They had had a group of inexperienced men in the office around that time. Some experienced people had resigned or quit, or were doing other things. He had some vacancies he hadn't filled with experienced people. They reorganized and things got going again.

County Jail Investigation and the Establishment of the
Northern Counties Service League

Sharp: The next case that I wanted to ask you about involved sort of a different role for as superior court judge, and that's the 1950 investigation of the county jail.*

Wollenberg: Well, it didn't in the way it arose. I didn't investigate the county jail. I just turned that over to the authorities to look into. What happened there was that this fellow I had--like I say, there were two or three of them.

Sharp: It all involved Albert Hayden and his brother, Marvin, and then Jack Silverman.

*See articles in the San Francisco Examiner for 16, 25, and 27 March 1950.

Wollenberg: Yes. Anyway, it was an abortion case. They had all been sentenced to five years' probation, conditioned on them doing a full year in the county jail. In a matter of a month--I don't know how many months--two San Francisco police inspectors, who were in an unmarked car and plain clothes, and had something to do with the original arrest in the case, George Murray had, as I recall--were driving along 19th Avenue in the Sunset, and saw this car and they recognized Hayden as driving it.* They said, "Isn't he supposed to be in jail?" "Sure he is," they said, and they scratched their heads, and then they stopped him and talked to him. He was with a woman who later they discovered to be his wife.

So they reported what they had found in the case. He had been in the habit of getting out and driving around, and coming home, and receiving benefits and so forth. The particular deputy sheriff [Louis Altieri] had charge of him, Hayden, was considered to be a trustee working in the garage.

Sharp: You ordered a probe then. In terms of the bureaucracy of the court, what happens after you order a probe?

Wollenberg: I simply suggested that the grand jury look into it. The district attorney [Edmund G. Brown, Sr.] in this case went ahead and brought certain police officers and others that they could discover before the grand jury. Now whatever happened to these deputies in the sheriff's office, I have no idea now. I don't think anything ever came of it. That was only with the one prisoner.

You've got that other piece out of Brief Case concerning the county jail and the Northern Counties Service League.**

Sharp: I didn't even know if that was related.

Wollenberg: No, I don't think so. That article has a lot of inaccuracies in it, to tell the truth. I just read it again, and I thought to myself, "Who could say this" [paraphrasing from article] "Police

*The other police inspector was Ralph McDonald.

**See Brief Case, November 1954, for an article by Henriette W. Steinegge entitled, "County Jail--Scrap Heap or Salvage Station," about the 1948 study of the San Francisco City and County Jails by the American Friends Service Committee, and about the Northern Counties Service League established as a result of this study.

Wollenberg: say 80 percent of people who come out of the county jail are arrested again, and 60 percent of them within two weeks.' What the hell are they talking about? They haven't got any statistics at all to stand on.

Working even now today on the committees that I'm on, we're trying to get statistics of this nature. Nobody can. The worst of all are the FBI's statistics. For years they used to make statements every year that 65 percent of the probation cases were failures, and the people were arrested again within a year or two years, or something of that kind. That's literally untrue! They have no statistics to sustain it. They don't have statistics on those kind of things.

What about when you don't hear from a fellow again? Who do you take as a failure? If a fellow gets a parking ticket, they put him down recidivist.

Sharp: Did you have suspected problems with the county jail before this incident with Mr. Hayden?

Wollenberg: No, I can't say that I was thinking of anything specific. I think the county jail has for years been always a problem, as it is in every county. In those days, they were old county jails. Now, the new county jail, so-called, down here, is an old one too.

Sharp: What's the basic problem in county jails? Not enough staff?

Wollenberg: Yes, the basic problem is budgetary problems, and lack of programs, lack of anything of an educational or occupational business. It's the same thing in all jails and prisons, particularly jails.

Sharp: Because the jail is meant to be a temporary holding?

Wollenberg: Yes, or a short-term place.

Sharp: In the article in Brief Case, I wondered what you thought, beyond some of the inaccuracies, about their judgment that there wasn't anything to do once somebody got to jail.

Wollenberg: They're right in that, sure. No, that's fine.

Sharp: But about the recidivism?

Wollenberg: When they're quoting statistics, they know darn well there haven't been any accurate statistics of that nature kept, particularly back at that time.

- Wollenberg: Today they've got the computer systems, and so on, and they're trying to do it, but it takes an awful lot of money to set it up.
- Sharp: Justice Raymond Peters was the man who saw the study, and who started what was called the Northern Counties Service League.
- Wollenberg: That's right. I was a director of that for several years.
- Sharp: How did that all work?
- Wollenberg: It was a voluntary organization that went out and got funds, some Community Chest funds and some foundation money. They hired some professionals, and put in a modest system, as best they could with what they had to work with in the county jail system: people job-hunting for offenders when they got out, finding them a place to live when they got out, things of that kind. Service--just what it meant--service.
- Sharp: Is this still going on?
- Wollenberg: Oh, yes. That organization is still very much in existence and alive.
- Sharp: Do you think it's made a difference?
- Wollenberg: Oh yes. It's been a worthwhile organization. Very worthwhile.
- Sharp: Are they in any way written into a state budget at this point, so they have more funds?
- Wollenberg: No, they're not. It's private--it's a United Fund agency.
- Sharp: The rehabilitation of the lesser offender was seen as the goal of this league?
- Wollenberg: Yes, that was it. That's why they're interested in county jails. That's primarily their interest--the petty thief, and things of that kind.

The Civil Department: A 1952 Muni Workers Strike

- Sharp: In 1951, then, you moved on to the Civil Department. One of the labor relations cases was this Muni worker's strike in 1952.*

*See San Francisco Examiner, 29 February and 14 March 1952 for articles on this strike.

Wollenberg: The strike in the railroad, yes.

Sharp: It seemed to me, at least in the articles, you spent a lot of time clarifying what you didn't say, and what you did say, in terms of your ruling.

Wollenberg: And even in that it isn't so clear, in those articles. They didn't want to make it clear. The thing was, in that it got into a political position with the mayor's office.* They were going to raise the fare on the Muni, and if they were going to raise the salaries they had to raise the fare.

They sought an injunction that the Muni workers couldn't strike, because they were working for the city. I got to work and tried to settle the strike rather than to just do patchwork on it if they didn't let them fight. I had them into chambers and in court, and it took a couple of days.

Finally we had everything settled. I remember it was a Memorial Day, it was a general holiday--I held court that day--and I had a heck of a time getting the City Hall, where the courtrooms were, opened, and an elevator running upstairs. It took half a day to find anybody to go to work and do all those things. I finally ordered it done, and it was done.

Sharp: From what I understand, the eight hours in ten rule also got mixed up in your ruling, and you never actually ruled on the eight hours in ten?

Wollenberg: No, because there had been another judge previously, Judge I.L. Harris, who had made some kind of a ruling earlier [in 1949], involving the cable cars, as I recall. First the strike started with just cable car operators, and then it spread.

Sharp: Both the city and the union, misinterpreted--at least the paper says they misinterpreted--your ruling?

Wollenberg: Well, did they? I don't know. They were both dragging their feet; nobody wanted to understand anything. That's why we were working at that time on a settlement, and the settlement wiped everything out.

I had not issued the injunction; and I had stated that they couldn't make cable car workers less or more, or whatever the issue was--I can't recall now--than the other operators, and that the chapter provided that they be paid in accordance with

*The mayor was Elmer Edwin Robinson in 1952.

Wollenberg: the three highest in the state of that kind. The evidence showed where the three highest were, and they were entitled to their raise. Then we got the thing settled, and everybody went back to work after the holiday.

Sharp: You did have to rule part of the ten hour scheduling?

Wollenberg: Yes.

Sharp: What the paper said was that you ordered the city to reschedule runs that were longer than ten hours.

Wollenberg: I don't think I in any order told them they had to reschedule anything. They said that in accordance with some order that I had made, they would have to reschedule runs that were over ten hours. I don't think there were many, if any. There may have been one or two runs that they could reschedule that ran over in the wee small hours of the morning, and took the car out early, or something of that kind. That was the issue there. It didn't affect the general problem.

I think what they really said was they would have to reschedule a couple of runs.

Sharp: The city was making quite a fuss about that.

Wollenberg: Yes, they were fussing about it, because they were making a big political issue of the fact that they didn't want to raise the fare. As I recall, it went from 20¢ to 25¢, or something like that--15¢. Yes, it went to 15¢. It was not very high.

Sharp: How was Mayor Elmer Robinson's office involved?

Wollenberg: They were the administration of the city, and it was his commissions that were responsible for the operation of the municipal railroad.

Sharp: It was the city attorney, Dion Holm, then, with whom you would meet?

Wollenberg: Yes, the city attorney and representatives of the mayor's office. Sometimes the mayor himself would come in. Union people, too.

Sharp: Was there quite a bit of pressure on you because this was the mayor's office, to get this thing resolved pretty quickly?

Wollenberg: Dick Nolan was a City Hall reporter, assigned to the mayor's office at the time.* He used to be in and out all the time about this and that and the other. He didn't like it; he couldn't get much satisfaction out of interviewing me.

There's a distinction between a legislator and a judge: a legislator can do all the talking he feels like he wants to do, a judge shouldn't be doing a lot of talking to the newspapers.

Sharp: Especially in labor cases?

Wollenberg: Sure.

Sharp: Are dealings with the press often an issue, especially in labor cases, or are dealings with the press just always an issue anyway?

Wollenberg: They are in any sensational case in which they can make something, a case that can be a good startling case. It could be a good, juicy divorce case, or it could be that kind of thing, as well as a labor case, or it could be a criminal case.

They were hoping to get into the Souza case, but they couldn't find anything. They gave it up. That was just a one or two-day wonder, that's all. There was nothing in it when they got there. There were nobodies involved. Unless they wanted to take after the district attorney or something of that kind, they couldn't. It wouldn't have been entirely fair, because his deputies were not up to snuff at that time.

Sharp: That's true. Just in my ability to ask you questions about your cases, all I have is the controversial ones to look at, because that's what I get out of the press.

Presiding Judge of the Superior Court, 1951-1952

Sharp: I wanted to ask you a bit then about your being presiding judge, which you were in 1951-1952. You spoke a little bit about the role of the presiding judge as sort of an administrative officer of the superior court. In terms of your work week, how much did you spend on administering the court, and how much did you spend on your own cases?

*The article in the Examiner for 14 March 1952 was by Dick Nolan.

Wollenberg: Well, you didn't have so many of your own cases, you see. They have what they call a master calendar system over there. A judge when his court is free is assigned another case right away. Every morning, there's a list of cases to be assigned, and the presiding judge calls the cases and says, "All right, here's Judge Jones, he's ready for a case. You're ready? Okay, I'll send him down to your courtroom." And they're distributed around.

Then there's a department known as the Law and Motion Department that's taking care of all the preliminary motions that come along first--attacks on the pleadings, motions for discovery, and a myriad of things that can be previous to trial, in preparation of trial, and subsequent to trial. Then the case is assigned to a judge for trial, and that's all he does then, is to try it when he's ready to go ahead with it.

But the presiding judge is doing all these other things all the time. There are all kinds of orders to be signed, like extending time to plead, and do this and do that and do other things that come to the presiding judge for his signature. He usually has a staff person to look them all over so the orders are in shape when he gets them on his desk. But they're there, and they have to be looked at. There's all of that administration that has to be done: the grand jury, and generally the business of the court, in other words. It's the court as a whole, as distinct from these judges and individuals of the court.

Sharp: Did you get a chance, then, to get pretty personal relationships with the other superior court judges?

Wollenberg: Yes, you would.

Sharp: More so as a presiding judge?

Wollenberg: Well, you did, in that somehow or other sometimes you learn who was really working harder and who was trying to loaf on you, ducking and not getting the cases through. You had to go through that and watch the work.

Sharp: Did that role put you in the position of being a counselor to the other judges?

Wollenberg: I don't know whether you'd call it a counselor. You're sort of a straw boss, to some extent. It depends on the man himself, or the individual, rather, I should say, the individual judge, whether he wants to talk things over or not. Sometimes you have to go talk it over.

- Sharp: Just an extra note about the grand jury: I noticed in the newspaper,* when you had asked the grand jury to look into the county jail situation in 1950, they did, and in fact they put some of their other issues aside. Was that a message from the presiding judge, to ask them to put other concerns aside and to look into what you thought was important?
- Wollenberg: No, it was just a matter of their timing, and what the district attorney was preparing to put before them. It was probably more his decision not to bring the evidence on the other concerns, but to bring in the evidence on this particular thing at that particular time.
- Sharp: Because they need to work with what evidence is brought to them to consider?
- Wollenberg: That's right.

Development of the Pretrial Department, 1956

- Sharp: Now I have a set of questions about the development of the pretrial conference. In 1956 you were appointed to preside over a new Pretrial Department as part of the superior court system.** I know that this was ordered by the Judicial Council, and Phil Gibson as Chief Justice of the California Supreme Court, was head of the Judicial Council. How did your appointment come about as head of this new department?
- Wollenberg: Phil Gibson as chief justice designated the members of the Judicial Council--so many superior judges, so many appellate judges, and so on. He appointed me to that position.
- Sharp: Why you?
- Wollenberg: He thought I could do the job, I guess. I don't know. I had worked with him when he had been director of finance under Governor Culbert Olson. I knew him from Sacramento from that

*See the article of 27 March 1950 in the San Francisco Examiner.

**See San Francisco Examiner, 14 December 1956.

Wollenberg: period of time. He had been made into a chief justice, and I knew him then. We had always had a relationship between us, as a legislator and so forth.

Sharp: Was the pretrial conference something that you'd been interested in before?

Wollenberg: Yes, in a small way I had been. It had been suggested and there had been things written on it; it had been suggested nationally in organizations. We'd reached the point where we thought that it--was important and I still think, more than ever now--that it's important.

In San Francisco, we were not pretrying anything. A judge would not sit down with the lawyers before the trial. We then passed a rule in the Judicial Council making it compulsory in all cases. That was later changed--pressure from the lawyers. But after I left the change was made.

Sharp: How do you mean pressure from the lawyers?

Wollenberg: Oh, they just didn't like it. They wanted to stay with the old system. They didn't want an order that they had to divulge their evidence to the other side in advance, so that you could talk it over and see what it's worth. You bring around an awful lot of settlements with the pretrial, and dispose of an awful lot of cases and get them out of the way.

Sharp: I noticed in this article about the setting up the Pretrial Department that you and Judge William Sweigert met with five hundred lawyers.

Wollenberg: Sweigert was the presiding judge at that time.

Sharp: You met with about five hundred lawyers just to discuss it?

Wollenberg: Yes, the bar was very interested in this. We had a meeting and discussed it all.

Sharp: In fact, the article even said that you soothed the lawyers. I wondered quite why the lawyers needed soothing.

Wollenberg: Soothe the lawyers, I see. Well, they were all upset and excited. As I say, they thought that the judge was going to do horrible things to their lawsuits. They were doing everything they could to oppose it. That was the same revolt all over the state.

As a member of the Judicial Council, I once made a trip. Judge Gibson sent me to about six or eight counties, and I talked to all the judges in these various counties--held forth in meetings and talked to them on his behalf as to why we thought and what we thought should be done.

Wollenberg: There was great opposition to it. Some judges were refusing to do it. We were trying to convince them to do it.

Sharp: Just because it was new?

Wollenberg: As far as we could see, just because it was new and it was going to change the system. They thought it was much more work for them or something; I don't know.

Sharp: You had mentioned before about the pretrial conference and that what it did was to clear away the issues to what really were the issues for this particular case. This involved mostly civil cases.

Wollenberg: Oh, sure, there's big volume. In fact, that's all we were doing in this period--civil cases. We weren't doing criminal cases at that time. We do them here.

Sharp: Are there certain kinds of civil cases that would benefit from a pretrial conference more than other kinds of cases?

Wollenberg: Well, probably, yes: the more complicated case. The thing that lawyers and judges objected to was the rule that every case had to be pretried. They'd always come back to the fact that maybe 65 to 80 percent of the cases in the superior courts are fender benders--traffic accidents. What's the good of that? Well, there was good to it. You can get into the damage theory, and what the damage claims are. You can get into settlement, and where the liability accrues to. These cases can be done very quickly. You don't have to spend a lot of time on an average case of that kind. When you find out what the dispute is--somebody says who was first in the crossing or something of that kind--somebody's going to have to decide that at a trial. You can disclose that very quickly. You can just say "This is the issue."

Other cases, where there are lots of documents and records and letters and conversations and all kinds of things--like a fraud case--can be very complicated. You can simplify it a good deal in a pretrial. You'll be surprised how many things will suddenly not be controversial, that you can agree on. Do it quickly.

Sharp: I understand that there has been a lot of change in the discovery process. I wondered if that came about when the pretrial conferencing came about, if the two sort of arose together.

Wollenberg: I think it probably had a good deal to do with it. The discovery processing has always been tied up with the evidence, what could be admissible, what's worthwhile, what's material, what isn't material.

Wollenberg: Of course, one unfortunate thing that's happened in the discovery process is that lawyers can just wear people out with the discovery that they'll go through--things they want, records and so forth. They get off into so much detail that a litigant who hasn't got the funds and the money to keep fighting in the discovery process can be greatly disadvantaged, the cost is so high.

Sharp: As the judge though, is there a point at which you don't need to know any more in the pretrial period?

Wollenberg: I think so. If you finally can shake it down to that point.

Sharp: But it's really hard to know where that point is?

Wollenberg: That's right.

Sharp: The development of the pretrial conference, then--was this actually developing a new role for the superior court judge?

Wollenberg: Yes, it really was, I guess. It was a new role in the sense that they hadn't done these things before, and now they're doing it.

Sharp: Did you like having that new role?

Wollenberg: I didn't mind it. I thought in the long run we were really speeding things up, getting more done.

[end tape 3, side 1; begin tape 4, side 1]

Sharp: I wondered what you thought about your role as a trial judge?

Wollenberg: The role is only different in that, in the trial court, you are dealing with facts as well as the law. In an appellate court, you are theoretically supposed to accept the facts that are found in the court of law and work on that, if the evidence is there. You can go back and see if the evidence is there to sustain the conclusion. If it's there, if there's something there to sustain it, you're bound to accept it.

That's the difference, plus another big difference: appellate courts are collegial courts. That means that you're dealing with the law alone, and you have to get someone else to agree with you. The trial judge is an independent person. He rules and he has the power, and has the right to rule.

Sharp: Is there quite a bit of difference in the courtroom when there is a jury and when there is not a jury?

Wollenberg: There's not quite a bit of difference. Lawyers behave differently. If they're dealing with a judge--once in a while they'll forget they've just got a judge and they'll start orating about something. I always say, "Wait a minute. There's no jury here; you're talking to me. Talk to me, not to that empty bunch of seats over there, where the jury isn't." So there is that difference.

But, the general presentation of the case should not be so greatly different, because the factual issues are still there. The judge is the fact finder.

Sharp: It was interesting to see this development of the pretrial conference that came while you were on the superior court, especially because of the fact that you were a trial judge, meaning that you were interested in fact finding anyway. You now had an aid--the pretrial conference--to help you in the process of figuring out what it really was was going on in the case.

Wollenberg: That's right, and you made an order, a signed order, a pretrial order, on which the case was based.

Sharp: So the case was moved several steps ahead just from that procedure?

Wollenberg: That's right, and the order set the trial. And, all that machinery--the administration of later coming up and calling a couple of hundred cases and putting them on a calendar--was obviated, because on every day, after a pretrial, a case was set for trial. The trial date was determined.

Sharp: It was interesting to read the three decisions in the Board of Equalization case: your decision,* and the two appellate ones.** The facts of the case couldn't have been simpler.

Wollenberg: That's right. It was all agreed; there was no factual argument at all.

*Allied Properties v. Board of Equalization of the State of California, No. 428383, January 16, 1958, Superior Court of California for San Francisco.

**Allied Properties v. Board of Equalization, 1959, 338 P. 2d., 1013; Allied Properties v. Department of Alcoholic Beverage Control, 1959, 346 P. 2d., 737.

- Sharp: And yet, by the time it got to the California Supreme Court, the law was just completely re-written in terms of what the judges thought. We'll go into this more next time, but I found the dissents far more interesting.
- Wollenberg: Yes, oh, by all means. Ray [Raymond] Peters's dissent is an excellent one.
- Sharp: I was sort of mentally applauding. It was wonderful. We'll talk more about that next time.

Role of the Jury and Jury Selection

- Sharp: If we could talk just a few more minutes now about the jury and the role of the jury then in a typical superior court case.
- Wollenberg: Well, it's like a jury over here [in the district court], or any court with a jury. The role of the jury is to judge the facts in accordance with the rules of law. They get the evidence in accordance with the rules--hearsay and so forth is excluded. Following those rules of evidence, they receive the evidence, and they apply those facts and they apply the law as given them by the court and the court's instructions. They have to follow that; they have no discretion there; they're not to question whether they think it's a good law, or a bad law, or if the judge is right or wrong. They're supposed to follow the law as stated to them, and make a determination.
- Sharp: Did anything impress you particularly about jury selection when you were a superior court judge?
- Wollenberg: Well, there was an awful lot of time wasted on jury selection during that period. Many lawyers tended to overdo the so-called voir dire examination of jurors, and really attempted to try their whole case as much as they could and leave impressions of what their case was, and go beyond a reasonable basis, I believe, in examining jurors. There was a lot of that done, and the court had no real power to curtail it.
- Sharp: Does it have more power now?
- Wollenberg: I think it does now, although the lawyers still go on and on. Judges do have more power if it becomes just simply frivolous and repetitious.

- Sharp: There seems to be some tension between a lawyer and a judge regarding cases in the courtroom. Is there always some sort of tension there, do you think?
- Wollenberg: Tension concerning what?
- Sharp: Well, with the pretrial conference, there was some reluctance on the part of lawyers.
- Wollenberg: Yes. Well, in that regard, that was a matter of they wanted to be left alone and prepare the case the way they liked to prepare it. They want to be able to play games with it, if they can. And this theory of a thorough laying out of the facts on the table in a case is not on the basis that it's a game-playing process, but it's a seeking to find the facts and do justice, and not outwit people on the basis of withholding a witness, not letting him know, "I've got a secret weapon stashed away somewhere." It's requiring them to give the names of all their witnesses and what they're going to testify to; and if they don't, not allowing them to call the witness that they hold out, as punishment for it. The pretrial would confute that.

There are lawyers who for years were supposed to be great trial lawyers--tricky Dicks, and so on--that were supposed to be so great at it. They always had a little trick, something up their sleeve. This pretrial does away with that, and attempts to get down to the basic facts right away, quickly, and do away with surprise.

- Sharp: So it really changes what happens in the courtroom dramatically?
- Wollenberg: Yes, dramatically. Sure.
- Sharp: Why would a litigant want or not want a jury? In some cases, a litigant can say which he prefers?
- Wollenberg: Yes, that's their option. They can waive jury.
- Sharp: Why would they want to, do you think?
- Wollenberg: Well, if you feel your case is simply a case that the judge will understand better than laymen, the lawyer says, "Look it, I think this ought to be for the judge, as it involves intricate questions of law and fact to the extent that you have to apply law that's pretty intricate, and has to be understood, and it's pretty hard to put that to jury, to come to a conclusion."

There's a big discussion now on antitrust cases whether juries are competent to take up the economic problems that are complicated--some of them very complicated in antitrust work.

- Sharp: Does a lawyer often prefer a judge over a jury?
- Wollenberg: Yes, lots of lawyers in certain types of cases come and waive the jury, or do away with it.
- Sharp: Did you see any changes in the selection of juries when you were a superior court judge, or had all this come later?
- Wollenberg: In the selection of juries--you mean the examination of jurors, or selection of the way you find them?
- Sharp: Actually, I meant the way you find them.
- Wollenberg: Who you call in?
- Sharp: Yes.
- Wollenberg: No, we were calling them in then from the registration rolls, and putting in a certain number out of the telephone book, and a certain number out of some other random selection of that kind, because, I don't know, only about 60 percent of the population registers.
- Sharp: Does that seem as good a process as any to get the pool?
- Wollenberg: I think so. Otherwise, I don't know what you'd do. You have to take a general list of what you can find.
- Sharp: That's all the questions that I have for today.

California Courts and the Board of Equalization: Bar Closings
and the Allied Properties Cases, 1953-1958

[Interview 3: August 26, 1980]
[end tape 4, side 2; begin tape 5, side 1]

Initial Thrusts

- Sharp: Let's talk first about two 1953 cases you heard that dealt with the powers of the State Board of Equalization. The Board of Equalization had closed two bars in San Francisco, the Tux and Pup bars because, it charged, these bars had allowed B-girls on the premises to solicit drinks from customers. The bars protested the closing and went to court to try to get their closing stayed.

Sharp: The San Francisco Examiner ran an article that said that this was part of a "get tough" policy on the part of the State Board of Equalization.* After hearing the arguments, you accepted the board's ruling, and the bar remained closed.

These cases came to court before a new law was going to go into effect in September, 1953, which made the action that they were charged with--allowing B-girls at the bar to solicit drinks--a misdemeanor. I wondered if all of this was part of some reform of bar owners going on throughout the state.

Wollenberg: No, I don't recall discussing it previously in that light. I do know that there had been objections from many sources, many people, when the Board of Equalization acted and penalized by requiring a closing or something of that kind for a period, or lifting a license for a time. By appealing to the courts, the bar or the offenders would then delay the action, having stayed the orders of the court, having stayed the orders of the Board of Equalization pending its determination of the case. Then it would be carried on through a long, tedious appellate review. Time would go by, sometimes as long as two or three years or more--the bar meantime running. Then, eventually, the courts would rule. If they did in favor of the state, of the Board of Equalization, then the board would go in and reconsider the penalty and settle the issues by either much lighter penalties or something of that kind.

What we were trying to do in the courts was speed the process up. Act quickly in these matters, rule, and get the process underway and moving as fast as possible through the courts. That would be over the objection of the bar people, who would be attempting to stay the proceedings as long as possible, put off the day of reckoning as far as possible. That was in cases where it was apparent from the record, or the court felt from the record that the board had acted properly. That was what we were attempting to do in some of our courts in California at that time.

Sharp: Were there a lot of cases of this kind that came to the courts then?

Wollenberg: There were a pretty good number coming through, because anytime that the board was disciplining a bar owner or a licensee for some infraction of the rules and regulations or the law, any such case, this procedure might be followed.

*See San Francisco Examiner, 26 June and 13 August, 1953.

Wollenberg: In other words, the appellate procedure to the courts would start and time would go on. It was a goodly number of cases. It was enough to make it noticeable that this was one of the weaknesses in the system, that it was just dragging on too long. It's an old saying--how true, I don't know--but justice delayed is justice denied, or something of that kind. That seemed to be the tactic of the bar people at that time. I don't say all liquor establishments, but a great many.

Sharp: Because there were so many delays in the court system, just because of the number of cases you had to deal with, the bar owners were able to use those delays somewhat for their own benefit.

Wollenberg: Sure. That's correct.

Sharp: Were there a lot of other kinds of rulings that the Board of Equalization made that were challenged with this frequency?

Wollenberg: You mean other than a ruling concerning B-girls? Yes, sure. There was the thing that we were concerned with in the Allied Properties case [Allied Properties v. Board of Equalization of the State of California] the sale of liquor at lower than stipulated prices.* This case involved resale pricing of liquor, fair trading, and so forth.

There were several other little infractions. The rulings could be about using bottles over again, or something of that kind. In those days you couldn't have a female bartender. If you had some girl serve drinks at the bar, as a bartender, it would be a violation of the rules and regulations.

Sharp: Was that because it was a fear that that itself might be solicitation, or might bring it about?

Wollenberg: I don't know whether that was it, or whether it was simply just an old bugaboo, like a lot of other regulations. It's pretty hard to say what it's all about.

Sharp: I wondered after this case, or throughout the fifties, if you happened to follow any of the board's licensing problems with Frank Bonelli.

Wollenberg: No, other than what the general press had to say about them. I had no other connection.

*Superior Court of San Francisco, No. 428383, January 16, 1958.

Sharp: So the main case then, for today is Allied Properties v. the Board of Equalization of the State of California.^{*} That was decided on January 16, 1958. This case also involved a challenge to the power of the board, and had quite a few results.

Allied Properties admitted selling liquor at lower than fair trade prices, but said that it was unconstitutional to be told that they couldn't do that.

Wollenberg: In that manner in which it was done it was unconstitutional.

Sharp: They saw this as an unlawful delegation of the legislative power of the state. Then they said that enforcement of this ruling constituted deprivation of property without due process of law.

Allied Properties also contended that the statutes had no relationship to the express purpose of the Alcoholic Beverage Control Act [ABC act], or the expressed legislative police power. Is this argument appealing to both the state and federal constitutions, or only to the state constitution?

Wollenberg: You had a provision in the federal constitution, in the amendment repealing the Eighteenth Amendment, which I believe is the Twenty-first. That expressly grants certain regulations to the states. Within that grant, of course, it's accepted that the state has regulations covering the liquor industry.

Ultimately, I held that my opinion at that time was based on the weakness of the law that there was not true regulation, that the public interest was not protected, and that it was an industry-controlled program without any public interest members or parties in any way having anything to do with setting the prices. That would be both state and federal as I see it now.

Sharp: That Allied Properties appealed to the deprivation of property without due process of law--that's pretty strictly a federal constitution idea from the Fourteenth Amendment.

Wollenberg: Yes.

Sharp: Now, you set out that this case is really the first exactly of this kind in California?

Wollenberg: Yes, in California. If you'll recall, we cited the Connecticut case and a few others around the country.

^{*}For additional details, see San Francisco Examiner, 17 and 18 January, 1958.

- Sharp: You actually cited precedents for both constitutionality and unconstitutionality of this kind of fair trade law. The Connecticut case, Schwartz v. Kelly, was actually a liquor price-fixing case.* It was declared constitutional, actually, in Connecticut.
- Wollenberg: Correct.
- Sharp: The case you said that came closest to your interpretation of Allied Properties's problem was the State Board v. Thrift-D-Lux Cleaners.**
- Wollenberg: That's a California case.
- Sharp: In this case the law was declared unconstitutional because it overstepped its bounds in allowing the dry cleaners to go ahead and set prices for the industry.
- Wollenberg: With no public representation on the dry cleaners' board.
- Sharp: So it was private industry regulating itself. The ABC Act used the police power of the state to enforce the fair trade statutes.

You said that it was proper for the state to use its police power to regulate the sale of alcohol, and that it's all right to regulate businesses affected with the public interest, but that it's unlawful to delegate the police power to the liquor industry, in this case to the wholesaler, to set his price-- so that the ABC Act actually benefits the industry and not people, not the public.

I wondered if you wanted to make any more comments about the decision, having thought about it or considered it?

- Wollenberg: I think that my decision was limited on that basis. From that decision came two appellate decisions. One in the district court of appeal of the state of California reversing and analyzing the act and going down saying it was constitutional, saying that the state had the authority to regulate as it saw fit in the matter, having been granted it by the Twenty-first

*140 Conn. 176, 99 A. 2d 89 (1953).

**40 Cal. 2d 436 (1953).

Wollenberg: Amendment and so on.* The purpose of the act was a laudable and proper purpose to wit, the promotion of temperance as it is stated in the act.

The state supreme court followed that same line of reasoning in an opinion by Chief Justice Gibson.** It likewise affirmed the District Court of Appeal and reversed my opinion in the matter.

Sharp: Your Allied Properties case as the first challenge to the liquor fair trade law--could you see it coming?

Wollenberg: No, I wasn't following the work of the ABC Board, that is, the Board of Equalization or any of its committees working on it. I didn't follow, except in that case that came before me--rulings in connection with liquor, or rulings in connection with and regulations of the ABC Act, as promulgated by the board. I had no interest or reason to follow it, so I can't say that I saw anything coming.

Sharp: Is there any particular reason that it came up at this time, then, do you think?

Wollenberg: It came up at this time because the Allied Properties company decided to go to court on it and challenge it. They felt that they were right, and they had no other interest of any kind in the industry, except that retail business that they were engaged in and their hotels. That was it. They decided to contest it to protect their license.

Sharp: Without any real precedents for the Allied Properties case regarding fair trading of liquor and controls of it in California, how did you come to your conclusions that the ABC Act was unconstitutional?

Wollenberg: I think that the Thrift-D-Lux Cleaners case set up a parallel, and that is the Thrift Cleaners act was more or less a parallel act, with similar provisions for setting prices. Not exactly similar, but similar in that the industry itself fixed its prices. Having fixed its prices, it was enforced by a state licensing system and a licensing commission simply in each case.

*Allied Properties v. Board of Equalization, 338 P. 2d 1013 (1959).

**Allied Properties v. Department of Alcoholic Beverage Control, 346 P. 2d 737 (1959).

- Sharp: So the state was in a position of enforcing rules drawn up by private people?
- Wollenberg: Yes. I think that that's what there was--at least that much of a precedence for the opinion.
- Sharp: Did your experience with Prohibition bring any thoughts about regulating liquor?
- Wollenberg: I don't think so. We didn't have any price problems, anyway.
- Sharp: From your experience in the assembly, was there any attempt to define more powers and reasons for the powers for the board at that time?
- Wollenberg: No, I don't think there was at that time. You see, the Board of Equalization at that time had great powers, not only in the liquor industry, but they were also the tax-gathering board of the state. They were engaged in administering the income tax--some portions. They were engaged in administering many other taxes, collection of corporate bank taxes, and so on. The Board of Equalization was perhaps the most influential and powerful party in the state in administration of many of the state laws.
- Sharp: Allied Properties was then challenging the board's powers.
- Wollenberg: In this field, yes. It was challenging the act that granted the power as unconstitutional.
- Sharp: In the newspaper, when the Examiner covered your decision in the case, it was quite a news story because it was this kind of challenge, and it was a successful challenge to the board's powers, at least in this area.* Was there some suspicion that the whole board's powers were just going to fall apart entirely?
- Wollenberg: No, I don't think so. This only concerned the very field in which we were engaged, and that was price fixing, retail price fixing.
- Sharp: Had you approved of the development of the ABC when it came about in 1954?
- Wollenberg: Do you mean at the time of setting up the act for price controls?

*See p. 215, footnote.

Sharp: Yes.

Wollenberg: Let's see, I think I voted against the act when I was a member of the legislature [1939-1947]. There were three people, myself, Arthur Carlson from Piedmont, and Raup Miller from Palo Alto.

Sharp: I remember from last time we talked, you thought it was pretty much swimming against the tide.

Wollenberg: Yes, that's right, it was.

Sharp: Did you all talk about why you disagreed?

Wollenberg: No, we never caucused or talked about it or anything else.

Sharp: What would have been a better law, do you think?

Wollenberg: If we were going to have price control, then it should have been a fair trade act, like the fair trade laws are set up. It could have been set up with an independent board, or different from the way this was set up in its procedures. It could have been done that way.

Sharp: Was this talked about at all in the assembly or in the senate?

Wollenberg: It was argued at the time the bill went through. As far as the arguments that were made on the floor against the bill fell of deaf ears.

The Role of Amicus Curiae Briefs

Sharp: From my information about the Allied Properties case in your court, I thought we could talk just a bit about the role of the amicus curiae briefs. From the records that I found of the case in the county clerk's office, I don't know if all the amicus curiae briefs were there, but a few of them were anyway. At least you heard from Athearn, Chandler and Hoffman, who were attorneys for Brown-Forman Distillers Corporation and Joseph Garneau Company, Incorporated. You also heard from Brobeck, Phleger and Harrison for the California Beverage Distributors Association, Incorporated. Generally, they used Section 22 of Article XX of the state constitution to say that the regulation of liquor sales was okay, that it was constitutional and that the law, the ABC Act, did allow some competition, so you really didn't have a leg to stand on to declare it unconstitutional.

- Wollenberg: Yes, but what competition was, that they point out, was simply the competition of being able to fix your own price. Somebody else's brand names, or labels, were selling in volume, and you felt you wanted to compete with that, you could write a letter and compete. That's irrespective of what you think would do to the public or anything of that kind. Price fixing has to be for some benefit of the public, and there wasn't any in this form of price fixing.
- Sharp: One of the ways that you used the amicus curiae briefs in your decision was to help separate the issues, because you allowed that fair trade laws of course were constitutional. But, you separated that from the constitutionality of the ABC Act--the way they were administered or allowed to--
- Wollenberg: The way they were operated or set up, yes.
- Sharp: I didn't see any petitioners' amicus curiae briefs. Do they often not send any in?
- Wollenberg: The petitioner has his own briefs. The amicus curiae--theoretically, at least--other people who have an interest who want to support a viewpoint. I guess there was nobody to support the viewpoint. No organization of any kind that wanted to do it.
- Sharp: I wondered if you remember any of the reaction to your decision by the public?
- Wollenberg: No, there was very little. The general public--I suppose you could say the drinking public--thought, "Oh, my God, maybe we can get prices to go down." To that extent--and that I say without an admission--that I think that this act promoted temperance. If you could afford to buy the liquor at high prices which were maintained under the act, you could still drink yourself into any condition you wished.
- Sharp: I wondered if you heard directly from, for instance, the California Beverage Distributors Association, or any of those groups?
- Wollenberg: Well, through their lawyers. The filing of the brief is a direct contact. Some of them came out and asked permission to argue. Some were granted, I guess, and some weren't in my court before it went on appeal. The briefs you speak of were the appellate briefs, or briefs in the lower court as well too.
- Sharp: Yes, they were the lower court ones.
- Wollenberg: They were filed. Some of them wanted to speak. I think maybe we allowed one or two of them in there to speak.

- Sharp: The people who put through the amicus curiae briefs would then go through this whole process again once the decision went to appeal, is that right?
- Wollenberg: Yes.
- Sharp: In the decision, you said that it was the function of the legislature to determine economic policy. I wondered if you could talk a bit about other examples in which the legislature might determine economic policy?
- Wollenberg: Don't you think any question of any regulatory act of any industry or business or profession that gives the power to boards to set the regulatory, that is, rules and regulations for the operation of a business, has something to do with the setting and granting of laws concerning economic policy? There are many grounds on which you'd do it, on police power, or something else--it still may affect economic policy. Or, anything of a nature that has to do with conduct of a business or conduct of an individual in a profession, except in the background, may or may not be considered a matter of economic policy. But it could just as well concern economic policy. That's all I referred to.
- Sharp: I wondered if you thought at the time, or you thought later, very much about the state's police power, the use of its police power, in how far should the state go in exercising its police power.
- Wollenberg: Well, it has to be reasonable. There has to be a purpose. There has to be reasonable regulation in accomplishing a reasonable purpose in an industry or business. Maybe for health reasons or something of that matter, like the barbers and cosmetic industry, or medical exams, the bar examination and so on. If the legislature feels that it does, then it says, "All right, a certain board can now prepare regulations and rules and enforce them in that business."

[end tape 5, side 1; begin tape 5, side 2]

Two Appeals, 1959

- Sharp: I thought we could talk just a bit about the first appeal that was entered in the first district court of appeal in May of 1959.* Were you told that the case would be appealed?

*Allied Properties v. Board of Equalization, 338 P. 2d 1013 (1959).

- Wollenberg: I wasn't told, I don't know why. I guess we pretty much expected it would be.
- Sharp: Did you have any particular role in the appeals process as the first judge?
- Wollenberg: Yes.
- Sharp: Did you, for instance, confer with any of the other judges before they heard the case?
- Wollenberg: No. Not anything. I did have one conversation with Fred Wood, who was one judge. He had been the legislative counsel at the time it was in the legislature. He had written an opinion at that time for somebody in the legislature that it was constitutional. He simply wanted to know whether I felt that would disbar him, or if he should refuse himself from sitting on it for that reason, and what I thought. I said he had to decide that; I couldn't decide it. I said, "I took the case and voted on it, and then ruled on it, and I voted on it when I was in the legislature."
- Sharp: You both were pretty consistent in that. He concurred with Judge A.F. Bray, and Judge Hanson dissented.* The opinion was that the legislature did act within its police powers, that the law was constitutional, and it was meant to bring about an orderly distribution of liquor at the retail level. That was at the end. And, it relies on Section 22 of Article XX again, and brings in that extra level, or extra amount of the police power that the state supposedly has when it's regulating liquor.
- Wollenberg: Yes. It's granted under the constitution of the United States as well.
- Sharp: It seems like we never really recovered from Prohibition.
- Wollenberg: And common law. They always regulated the liquor industry. It was taken for granted.
- Sharp: The other part of this first appellate decision was that because the ABC Act was generally applied--applied across the board to all liquor in California--that it was not a breach of the legislative power because it wasn't a particular law. What did you think of the decision? I know you didn't agree with it.

*This may be Raymond L. Hanson.

Wollenberg: I not only didn't agree, I felt that the court had gone out of its way to find the law constitutional. I accepted the decision but I felt right along that it was not a good decision, in either the appellate court or the supreme court.

I think Justice Raymond Peters's dissent in the supreme court case was a pretty good opinion.* Very, very well done, and represents, I think, a very good statement of the law.

Sharp: Judge Hanson in his dissent was more concerned with the monopoly situation that he saw for the liquor industry.

Wollenberg: That's right. Ultimately, the most recent decision of all went on the antitrust and monopoly basis.**

Sharp: I have a few questions on that too.

Hanson's dissent made me wonder how you decided what to put into your decision. Of all the different considerations that you might have made about the unconstitutionality of the law, why you decided to focus on the more limited aspect of the unconstitutionality, and not talk about monopoly in the industry or anything like that?

Wollenberg: Well, I'm not so sure that in an interpretation of the act, that we have to interpret that there was a grant of any monopoly in that. As pointed out by the statement, I guess it's in the court of appeal opinion, as well as in the state supreme court opinion, that there was the opportunity of competition between brands. We were talking about price control within a brand as what this was to do: fixing resale prices in connection with a specific brand. I did probably at that time feel that that was not a strong point, to put it entirely on the monopoly basis.

But there have been a lot of cases and a lot of things happen, of course, in what we figure out are those twenty years between the two decisions.

*Allied Properties v. Department of Alcoholic Beverage Control, 346 P. 2d 737 (1959).

**Here Judge Wollenberg refers to Rice v. Alcoholic Beverage Control Appeals Board, and Young's Market Company v. Alcoholic Beverage Control Appeals Board, 146 Cal. Rptr. 585 (1978), two California Supreme Court cases dealing with same issue.

Sharp: Why can state judges decide so differently about the use of the state's police power, what it can and cannot do?

Wollenberg: There are all sorts of phases to this case. Some purpose of the use of power might outweigh as a matter of public interest something on the other side of the argument which would ordinarily be a valid statement.

It's like the old problem with the First Amendment and publication of things in the newspaper. You have two separate issues here. What is most important to the public welfare and good in the publication field--the right to publish anything and everything you want to do and say (under the right of free speech) or, the right of the individual to be protected against wrongful statements about himself and his character? You should have open means of defense. So you have to weigh issues.

Judges can have different opinions. We can't all agree all the time on what we consider the most important, outweighing all the other arguments. We've got a different concept, and that comes from what you want, what you've done, your experiences. I don't know anything else to say about it. I think that's true.

Sharp: I wonder then about the California Supreme Court appeal that occurred then later in the year, in November of 1959. That was a four-three decision: Phil Gibson wrote it, along with Roger Traynor, Homer Spence and White concurring. Marshall McComb, Raymond Peters and B. Rey Schauer dissented. Were you able to talk either with Chief Justice Gibson or Justice Traynor about their thoughts on this case at all?

Wollenberg: Very generally only. I had friendly discussions with Justice Traynor, but they were very general in their statement. I really didn't get any more out of them than what they said in the opinion.

Sharp: The decision said that the ABC Act was not unconstitutional, because the law provided that each producer or wholesaler had to set the price at which the retailers would sell the product. Supposedly the act prevented increases in liquor consumption because it eliminated price cutting. This decision said that it relied more on the Scovill Manufacturing Company v. Skaggs case,* rather than the State Board v. Thrift-D-Lux Cleaners**. In the

*45 Cal. 2d 881.

**40 Cal. 2d 436 (1953).

Sharp: former case of Scovill, the retailer accepted the prices he would sell the liquor at. Gibson said that this is really the big difference, because this is not price fixing without consent.

Wollenberg: There wasn't any provision in there. The retailer didn't consent to liquor fixing prices. Well, the decision says that Scovill held that prices set by a fair trade contract were held to be binding on a retailer who had not signed a contract. Then they stated in Scovill [reading from decision], "the acts that private parties in entering into contracts for the sale of commodities constitute the facts in contemplation of which the legislature acted, and upon the existence of which the provisions of the enactment were applicable. The private contracts are no more legislative in character than are other acts or conduct of private parties undertaken as prerequisite to the application of the statute. The consequence that the statute has become applicable, and conduct in violation thereof has become actionable is in no way due to the exercise of any assumed legislative power on the part of the contracting parties. We conclude that there is no delegation of the legislative function in violation of constitutional prohibitions."

I don't know what they're talking about. I don't think that's the situation under the Alcoholic Beverage Control Act, because Scovill Manufacturing v. Skaggs Drug Stores was under the Fair Trade Act, general fair trade acts, as they say here. The ABC Act was in no sense of the word a fair trade act.

I don't think much of these opinions. I said that. This is a lot of hogwash, goggledywhat. He's filling up space with something that sounds like it's appropos, and I don't think it is.

Sharp: I don't think it is, either. I just wondered if I'd read it wrong, or wasn't understanding what he was saying.

Wollenberg: He's talking about another act; it's apples and oranges we're talking about here. It says there's "no delegation of the legislative function in violation of constitutional prohibitions," but in the fair trade acts, where he says the legislature acts, number one, he says, apparently with everybody's consent in this particular thing he's talking about. Plus, the whole operation of the act is different if it's one of the general fair trade acts, which he says: "the question of unlawful delegation under the general fair trade act" was decided in Scovill. We didn't have a general fair trade act; we had an act, in my opinion, more like the one of the Thrift-D cleaners, which was not a general fair trade act, either.

*45 Cal. 2d at p. 888, as quoted in 346 P. 2d at p. 741.

- Sharp: Their reliance on the wrong things to declare the ABC act constitutional.
- Wollenberg: Gibson's decision wasn't worth anything, I didn't think.
- Sharp: What did you think was so good about Peters's dissent in this case?
- Wollenberg: I think he took every argument and discussed it, and did it thoroughly. He did a complete job. He stretched some of his things pretty far to do it. I think the strong point, the one I used, and I think one or two others--but he took the whole thing and went right after it.
- Sharp: He did seem to use almost exactly the same reasoning as you did, and then to push it the next step.
- Wollenberg: Yes, and added the other points.
- Sharp: For instance, he stated very clearly, "This isn't going to do anything for temperance." Then he said, "It doesn't really stop price wars between name brands and non-name brands," which supposedly the act was going to do.
- Wollenberg: No, because the way out of this was for someone to take a private brand, you see. You buy bulk whiskey, take out a private brand under the federal regulations which will allow you to do that-- "Mother's Milk" or something like that, and then put on an advertising campaign for "Mother's Milk." Nobody else sells mother's milk that's so intoxicating--as good or better than whiskey--so it could become very popular, perhaps. You got it all to yourself. Who else is bottling mother's milk made in a distillery?
- Sharp: Did you ever get to talk to Judge Peters about his dissent, or did he talk to you?
- Wollenberg: Oh, yes, we used to just, in very light terms, kid about it and talk about it just in passing, but I never seriously sat down and told him how much I thought they were wrong on that decision.

A Note on an Appeal Regarding the Powers of the Alcoholic Beverage Control Appeals Board, 1978

- Sharp: The two 1978 California Supreme Court cases that you showed me that were decided together: one was Rice v. Alcoholic Beverage Control Appeals Board and the other was Young's Market Company v.

Sharp: Alcoholic Beverage Control Appeals Board.* Justice Stanley Mosk was the justice writing the decision. In this set of cases, the price maintenance provisions of the ABC Act were declared unconstitutional because they violated the Sherman Anti-Trust Act. Very simply done. Combinations in restraint of trade were illegal, pure and simple.

Wollenberg: This is what he felt too.

Sharp: The decision is not really very much different from your own. The reasoning is there.

Wollenberg: That's right.

Sharp: But the maintenance provisions were directly tied to the Sherman Act in this case.

Wollenberg: He talked to me about it.

Sharp: Justice Mosk?

Wollenberg: He told me he approved of my opinion, and he agreed with it. But he didn't like the fact that a board--in those cases, I believe, the ABC board, the price control board acting in that field, declared it unconstitutional through a hearing officer or something. He thought it should at least be in a court that should be declared unconstitutional.

So, he worried about whether to divert from the issue and say that the board, or whoever found it unconstitutional, had no authority and power to find anything unconstitutional, it had to be done in a court. He gave that up.

I didn't tell him he should. I said, "That doesn't even make sense. That looks like you're ducking an issue. Just forget that entirely, and when it becomes important, then take it up sometime. But unless it isn't, it doesn't mean anything. They have a perfect right to say it's unconstitutional. I think they do."

Sharp: The end result of the decision is that he met it head on.

Wollenberg: Yes, that's right.

Sharp: Perhaps that came as a result of talking to you.

Wollenberg: Well, he hit it head on just as I had hit it head on. Of course, all the courts did. The other courts did too.

*146 Cal. Rptr. 585 (1978).

V A GLIMPSE OF OTHER EXECUTIVE ROLES, JUDICIAL AND
COMMUNITY, 1947-1958

President, Conference of California Judges

- Sharp: I have some questions now about your other activities during the period from 1947 through 1958. Some judicial, and some community activities. In 1957 you became president of the Conference of California Judges. I wondered what the purpose of this Conference of California Judges was.
- Wollenberg: There was no organization prior to it where judges might meet, exchange ideas on administration of courts and common problems, and have committees to discuss them and go into them, and report back to the group. Common problems, among other things at the time, were compensation and the benefits that come along with it, health insurance, and retirement. At that time, there was no retirement out for judges. It was passed around the time that I came out of the legislature. Things of that sort--that was the general purpose.
- Sharp: Were there specific ties with the state legislature that the conference had to put forth its ideas for change?
- Wollenberg: No, this was purely a voluntary organization of judges, independent of any authorization from the legislature.
- Sharp: Did you have certain representatives or state senators whom you would encourage?
- Wollenberg: Yes, sure, there were senators and assemblymen who were willing to carry, and listen to our suggestions, and so on. We had the judges who were charged as members of a committee to keep in touch with the legislature and transmit. Up to that time, if the judge had a problem or a suggestion to make, on his own time he'd leave and go to Sacramento, see his local legislator or catch him when he came home or something of that kind, and discuss

Wollenberg: the problems purely as an individual. Then if he thought he was right, and that he ought to keep talking about it, he'd go to Sacramento, and go around visiting legislators for a couple of days until he was driving them crazy up there. One after another, a few judges would go. You know, if four or five judges do it, the reputation in Sacramento among the legislators was that there were forty or fifty of them around.

We advised, after we were organized and had the committee and everything, that Justice Paul Peek, who had been a former speaker of the legislature, and was on the appellate district court of appeal in Sacramento at that time before he went on the state supreme court, be the official representative of the courts. Anything that that association of judges had that they wanted to communicate would be done through him and through the offices of the association--president, something like that.

There probably were a half a dozen times in a session--maybe not that many--that I'd go to Sacramento, and with Paul Peek, go around and see some of the senators, and have a senator put in a bill for us for some purpose. He'd advise where the opposition was, and would you go talk to Senator So-and-So. Paul and I--the two of us or either one of us--would go talk to him.

Sharp: Is this how some of the judge's compensation laws--

Wollenberg: Yes, salary bills were taken up that way too.

Sharp: Was there any particular year that you got more changes all of a sudden, or how did this come about?

Wollenberg: Well, you'd get times when you'd get changes and increases, and there'd be times when you'd meet defeat. It never was a foregone conclusion that anything specific would happen. We weren't there every session for every concern.

Member, Judicial Council of California.

Sharp: You then also became a member of the Judicial Council of California.

Wollenberg: Yes, I was appointed to that by the chief justice, Phil Gibson.

Sharp: How did that appointment come about?

Wollenberg: He just phoned me up and asked me if I'd serve, and I agreed to.

Sharp: What is the purpose of the Judicial Council?

- Wollenberg: It varies. It is provided for by law. It passes and suggests the adoption of rules for the court around the studies of administrative procedures might be useful, changes. It has to do with conduct, generally, and procedural matters, rules.
- Sharp: This would be rules both for judges as well as courtroom procedures and things like that?
- Wollenberg: Yes, that's right.
- Sharp: Were judicial qualifications part of the council's work?
- Wollenberg: No, that qualifications commission--is that what you're talking about? The three on nomination from the governor?*
- Sharp: Yes.
- Wollenberg: No, that's a statutory, constitutional office. We did not make recommendations. The council had just to do with administration by the courts of the courts. It had nothing to do with the governor's appointees.
- Sharp: The rules that would be passed by the Judicial Council, then, would be abided by automatically by the state courts, then?
- Wollenberg: To some extent. And if they weren't, we'd try to find out why not and do what we could to see that they were followed. It was troublesome at times to get everybody to do just what they should, like the pretrial thing that we discussed last time.
- Sharp: Because there was some opposition on the part of the lawyers to that.
- Wollenberg: Yes, a lot, and then on some of the judges, the courts, there was opposition.
- Sharp: Because the judges thought it would take too much time?
- Wollenberg: Yes, time, and the dead belief in the old theory, that it's a game, and you go out there and play the game. We were trying to get away from all that.

*Here Judge Wollenberg refers to the Commission on Qualifications which reviews the qualifications of persons appointed by the governor to fill vacancies on the California Supreme Court or a district court of appeal.

Sharp: The reason I'm asking these questions is because the bureaucracy of the state court system--how it functions and what the organizations are to make it function--are pretty invisible. I'm sure they don't seem invisible to you, because you've been involved in them.

[end tape 5, side 2; begin tape tape 6, side 1]

Chairman, Jewish Community Relations Council

Sharp: I had just a few questions about your Jewish community activities in the 1950s. From what I could tell, it was in the 1950s that you became especially active in a couple of different ways. In 1952 you became chairman of the Jewish Community Relations Council in San Francisco. I wondered what all led up to your becoming chairman of the council?

Wollenberg: I was a member of the council. Nothing specific led up to it. I was there and was active on the council. The council selected me as chairman.

Sharp: Tell me something about some of the activities that the JCRC was involved in.

Wollenberg: We were interested in meeting overt acts of anti-Semitism in the community and things of that kind. Jewish people who had complaints as such could report them and we'd investigate to see what we could do to strengthen our [position].

Sharp: Would these be social?

Wollenberg: Yes, employment, and things of that kind. .

Sharp: For instance, belonging to certain clubs?

Wollenberg: Yes, the clubs.

Sharp: I understand, a few years ago when a group of Soviet Jews came to San Francisco to live, they had emigrated, that the JCRC helped them to get settled and into contact with different agencies. Is that the kind of thing then also?

Wollenberg: We didn't have that kind of thing at that time. This was pretty early, and I haven't been active in recent years. No, at that time, we were primarily interested in [discrimination]. I suppose we would have if we'd ever had a thing of that kind. If we could assist with getting them in touch with social agencies and things, that's what we would do.

- Sharp: I wondered if you had special opportunities because you were a lawyer and a judge, when it came to job discrimination?
- Wollenberg: Perhaps. That was one of the things that became quite sensitive to me, and I didn't think that my office and what I was doing should ever be used to pressure any people in any way whatsoever. It would be a direct conflict of some kind. So I did not personally appeal any of these.
- Sharp: But that did get in the way sometimes?
- Wollenberg: No, that didn't get in the way in that I didn't personally take part in any of these things, and it never arose in my office as a judge. I never had a conflict; I never had anything.

A Long Association with Temple Emanu-El

- Sharp: I've noted also that you've been an active member of the Temple Emanu-El for a very long time, since you were a child, actually.
- Wollenberg: I went to Sunday school there.
- Sharp: I was reading over the oral history that was done in our office with Cantor Reuben Rinder's wife, Rose Rinder.* I was also reading over a book called Glimpses of Jewish Life in San Francisco and I got to the biographical notes.** I guess when you were quite young, Rabbi Martin Mayer was a rabbi at Temple Emanu-El, and he used to have open houses on Saturday afternoon. Do you remember any of these?
- Wollenberg: Oh, yes, I've been to his home. Certainly he was a very fine man and well-liked in the community, and had a good rapport with the young people. He liked to go camping. He'd go up to Tahoe or go to Yosemite or go out into the high country on a hike with young people. He was a very well-respected and highly effective man in the community.

*See interview with Rose Rinder, Music, Prayer, and Religious Leadership: Temple Emanu-El, 1913-1969, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, and Judah L. Magnes Memorial Museum, 1971.

**Michael M. Zarchin, Berkeley: Judah L. Magnes Memorial Museum, 1964.

Sharp: Was he an important influence on you, do you think?

Wollenberg: I think so.

Sharp: I understand that you were president of the temple between 1957 and 1961.

Wollenberg: That's about right.

Sharp: --Rabbi Alvin S. Fine told me.* What is the purpose of the temple's board?

Wollenberg: It's like any other governing board. That's a pretty big operation out there. There's a tremendous building to maintain, there's a large staff. It's organized religion in a biggest operational as possible state. It takes a board, it takes a lot of people to run an operation.

Sharp: What was the size of the congregation then? Do you have any idea?

Wollenberg: At that time I think we had somewhere around 1500 families, 1600 families.

Sharp: That's very large.

Wollenberg: Yes.

Sharp: Has it grown quite a bit now?

Wollenberg: No, I think it's much less right now. I think so. I don't know what it is right now.

Sharp: Rabbi Fine told me that he was the rabbi when you were president at that time.

Wollenberg: Yes, that's right.

Sharp: He said that he relied on you quite a bit as president of the board. I wondered if you could tell me about the relationship between the rabbi and the president--what sort of tasks you exchanged, and what sort of contact you had?

*This interviewer-editor conducted a phone interview with Rabbi Fine 31 July, 1980. A tape of this interview was deposited with this manuscript in The Bancroft Library.

- Wollenberg: Being the spiritual leader of the congregation, we'd look to him for leadership, and for him to be active in the community of San Francisco, and show his leadership in the general community as well as in the temple—all which Alvin Fine did. He was well-known, well-liked, and respected in the community. The relationship of the rabbi with the president was that of being in touch with him, with what he was doing, and where we could help. Generally, it was a very good relationship. There was nothing that wasn't understandable.
- Sharp: With 1500 or so families, there must have been a lot of change going on.
- Wollenberg: Oh, yes, sure. There was always a lot of things doing. That Temple Emanu-El has a big staff. There's the rabbi; there's an assistant rabbi; there's a cantor; there's a big Sunday school with a big faculty. In the Sunday school faculty, there are fifty to sixty people, I guess, the one time I was there.
- Sharp: That is a lot.
- Wollenberg: Yes. It's a big one. We took part with other temples in a training school for Sunday school teachers that contributed to that teaching. Younger people that were interested in going on could go and study, teach.
- Sharp: Were the Sunday school teachers from the young people within the congregation?
- Wollenberg: Not necessarily, no. There were several, of course, but not necessarily. There were people who would come from other places.
- Sharp: Marvin Schoenberg came in as administrator for the temple during that time. Was it the duty of the board to hire him?
- Wollenberg: Yes, the board employed him.
- Sharp: Then Rabbi Fine took his sabbatical, I guess, just about that same time.
- Wollenberg: Yes, he did.
- Sharp: Was that a concern, an automatic concern of the board's then, that the rabbi would want to go away for a year or so?
- Wollenberg: Well, we understood that he would want to. We granted him his right to go. Unless there's a change, I don't think there's been any established sabbatical as to when it will be, or how

Wollenberg: often or when it will come. But the Temple Emanu-El has always granted a sabbatical for this purpose when it becomes apparent that it's a reasonable thing.

Sharp: Some of the other people that worked on the board Rabbi Fine gave me the names of--Myer Kahn, Samuel Jacobs, Louis Heilbron, Reynold Colvin and Eugene Block. Were there any others?

Wollenberg: Oh, yes, there were a lot of others. Harold Zellerbach. He's gone now. Silvia Stone has always been there--that's Mrs. Daniel Stone. [pause] It was a big board--isn't it terrible that you don't think of them? I used to know them all.

Sharp: Do you remember any particular stories about some of the activities that you went on when you were president of the board?

Wollenberg: Before Marvin Schoenberg, there was Louis Friehef as the general secretary. He died not too long ago. He left to become general secretary of Sinai Memorial Temple, I think. You know, the funeral parlor.

Then we have a big cemetery down the peninsula, big property down there and a big cemetery. The Home of Peace, that's run and owned by the Temple Emanu-El. There's a big columbarium and a big area of graves.

Sharp: That all has to be administered by the temple as well?

Wollenberg: By the temple board.

Sharp: That is a lot of work.

Wollenberg: It's a big operation down there. Quite big. It's many, many years old. It's right in the heart of the cemetery row down there in Colma. Home of Peace. It's sort of cold. It was out on Laurel Hill years ago, and it was moved down there. Some of those old graves that were moved are interesting and have never been really fixed up. There's a grave moved down there for--what's his name? You know, an old western sheriff and law man that I've read about a good deal. Wyatt Earp.

Sharp: Oh, really?

Wollenberg: Yes. The grave is empty. The body was gone. They claim they have him down in Tombstone, Arizona.

Sharp: I bet they claim him in a lot of places!

Wollenberg: We had him once!

Wollenberg: There are these private mausoleum-type places; you know, crypts. We have a terrific row down there, probably the biggest in northern California. We have all kinds of Greek architecture, everything else you want to see, one after another. That's a big business.

Sharp: So I gather. It's a strange business.

Wollenberg: Yes. They have their own crematorium; they do cremations for our own cases and for others.

Sharp: Is cremation accepted as a--?

Wollenberg: Yes, it's accepted.

Sharp: It's interesting that many churches are accepting cremation now. It's a real turnaround from the way it was thought of before.

Wollenberg: It's interesting how this--what do they call it? This thing on the bay?

Sharp: Oh, the Neptune Society?

Wollenberg: The Neptune Society. That's growing to beat the band.

Sharp: It's an inexpensive alternative for people who have no other means.

Wollenberg: Well, even people who do have means, who don't believe in leaving a mark on the place where it's disposed of.

Well, I guess we've about covered the temple.

Sharp: I know it's hard to recall all of those things with so many other events.

Wollenberg: Temple Emanu-El is an old San Francisco institution. It's plenty old. It was established about 120 years ago now. Its old minutes are interesting. For instance, this is back in the early 1850s, I guess, the gold rush days and all, there were no matzoh bakers on the Pacific coast. So the temple sent back to the old country and brought out a matzoh baker to be able to start a matzoh factory here. He baked them here for all up and down the Pacific coast.

Sharp: It's funny how industries get their start--this was a very necessary one for the Jewish people who were here.

Wollenberg: Sure. I guess some of them knew how to bake their own, but they brought out a matzoh baker. Things of that kind are in the minutes of the congregation. Somebody had suggested it, and they were going to do it. A couple of members put up some money to get him out here and so on.

- Sharp: That's great. I wonder if he thought he was coming to the jumping-off place of the world.
- Wollenberg: Yes. [laughs] I wonder who he was, too.
- Sharp: Are there any tributes to this first matzoh baker in the Bay area?
- Wollenberg: None that I know of. The only reference I know of at all is this one.
- Sharp: Rabbi Fine suggested that I go out to the--
- Wollenberg: Magnes Museum? Oh, yes, the one in Berkeley. They have some lovely things. Have you ever been there at all?
- Sharp: No, I haven't.
- Wollenberg: They have some lovely old silver chalices and things of that kind.
- Sharp: There have been some good oral histories done like the one with Mrs. Rinder. I understand that the temple has its own library as well, and does keep lots of records?
- Wollenberg: The temple has a library.
- Sharp: It would be interesting to go see it.
- Wollenberg: Anytime you have the time or interest in it, I can phone out there and ask somebody to meet you and take you through. Then you can get an idea of what's there. If you want to come back, you can make arrangements for it.
- Sharp: I would like to go out there some time.
- Wollenberg: I'll do it anytime.
- Sharp: I'll remember that.
- I thought next time we would talk very loosely about how we would approach your federal district court years, because there are so many cases.
- Wollenberg: That's what we're supposed to be doing.
- Sharp: Then next time we'll talk about that. Do you have some law clerks that I might be able to contact, too?
- Wollenberg: Oh, yes, I've had lots of them. Sure.

Sharp: Does Laurel have a list, or do you have a list tucked away?

Wollenberg: Sure, Laurel will have a list, and I can give you names right now.

Sharp: Who do you remember right off the bat?

Wollenberg: Right off the bat I remember Steven Brick. He is in the Orrick law firm. Orrick, Somebody, Somebody, Somebody and Somebody Else.* And, there's Richard Kalish, who is practicing now by himself. He was in the Dinkelspiel firm. There's of course Danny Weinstein, the judge. There's Tom Mellon, Jr., who's in the book on his own. There's David Wilson. He's with the Dinkelspiel firm, but he's in the book on his own. You don't need it. There's Charles Miller, and a whole bunch of others.

Sharp: Were they generally short-term?

Wollenberg: Generally a year, not over two. A year to a year and a half. My last one just left--was Peter Goldsmith, who's with the Heller-Ehrman office.**

Sharp: I'll ask Brick for others.

[end tape 6, side 1]

*Orrick, Herrington, Rowley, and Sutcliffe.

**Heller, Ehrman, White and McAuliffe.

VII A BRIEF OVERVIEW OF THE NORTHERN DISTRICT COURT'S
RECENT HISTORY

[Interview 4: September 9, 1980]
[begin tape 7, side 1]

Introduction

Sharp: I had a chance to talk with Stephen Brick, one of your earlier law clerks, last week. He was very helpful in giving me the day-by-day schedule of the kinds of things that you have done on the district court bench. He told me how you split the work, what kinds of work that he did for you, what his role was; and how he fit in to the kinds of cases that you had.

One of the most interesting things I asked him, since you had done so many cases, in both published and unpublished opinions, was how he would organize the cases into some of the more important areas. I wanted to ask you some more about that today.

However, I thought I would start by asking you what sort of changes you had seen in the Northern District Court since 1958. I don't mean, at this point, necessarily issues addressed in the courtroom and how that changed--we can deal with that later--but just how the system itself might have changed since 1958.

Wollenberg: Sure. When I came on the court, it was a court of, I think, six judges at the time: Judge Louis E. Goodman, George B. Harris, Oliver J. Carter, Edward P. Murphy, Sherrill Halbert, who sat in Sacramento, who's still alive and around, and myself. I succeeded Oliver D. Hamlin, Jr. He went on the court of appeals. Judge Lloyd H. Burke succeeded him after I came on a few months. I succeeded Judge Michael J. Roche, who became a senior judge. We had one senior, and six active judges at that time.

Wollenberg: Now, I think it's twelve active judges, and one vacancy. There are eleven of us with one vacancy. Judge Charles Renfrew's position has not been filled. So the court was considerably different. It's just about twice the size. We have three seniors now, and Judge Burke, who's on a part-time sick provision. With that, the volume is much greater today. The workload of each judge is heavier, I'm sure.

We had a different system then. It was called a master calendar system, where cases were called by one judge and then assigned out when they were ready for trial. There was a Law and Motion judge who handled writs and motions and worked independently of the judge who might have ultimately tried the case. When a court opened up, then a case was assigned to that judge. We gave that system up. It was inefficient for our purposes. Going back to the general straight assignment system that we have today certainly proved that the other system was inefficient as far as our court was concerned. State courts use it in California.

Sharp: It was inefficient because it went through too many hands?

Wollenberg: Yes. And we had it then, the judge worked on the case and prepared the motion and ruled on the motion. Then he was no longer on Law and Motion. The next time a motion came up, some other judge had to go back over the whole thing again. Then some judge who was going to try it had no knowledge of what had gone before at all. If one judge takes it from the very beginning right through, he's much better equipped.

This is particularly true in the type of cases, which have changed a great deal over the years, I figure. Congress has given us much more work to do in many more fields, and broadened many fields for our work. Just taking the so-called civil rights or discrimination cases and everything like that; looking at the employment cases which didn't exist at all before; and, sex discrimination cases which didn't exist--and there are loads of them in the courts. The cases involving age discrimination, we have loads of them, too. Not as many as the other two, but there are cases--lots of them. We have the rental cases, lots of them based on race. Also in here are the rentals and real estate transactions involving discriminatory actions.

Sharp: And antitrust?

Wollenberg: And then, to go to the other field of antitrust, it has become a very complicated field. It has long, tedious cases that go on and on for weeks and weeks and weeks of discovery, and lots of motion matters. Preparing for trial takes a lot of effort and more time in the antitrust field. It's true to a great extent in the security cases and the Security Exchange Commission cases which are a whole new field.

Wollenberg: Antitrust was with us before, when I first came on the court, but the cases were not as complicated and of the same nature that we have now. Suddenly it's discovered as a great place, with its treble damages, for profit.

Of course, this has raised an issue, with many people feeling that this type of case should not even be in the courts, others feeling that it should not be with a jury if it is in the courts. One argument is that perhaps there are administrative ways of handling it, within an administrative agency or something of that kind--broadening the powers of the Federal Trade Commission to handle the cases.

Treble damages--people think that it's not proper for the so-called public, or district attorney, enforcing officer, to do it on a treble damage basis. Because we certainly know that damages and verdicts and judgments would become astronomical.

With all that, the cost of litigation in the field of antitrust has become ridiculous. Judgments run into the hundred millions in some cases when they're trebled. Then, there are applications for fixing attorneys' fees. They again run into the many, many millions. With that as a stake, people invest a good deal of money in the preparation of the case. There's no end if you're suing a tremendously big corporation. There's no end to what they can do--traveling all over the country taking depositions of people in different places, areas. So costs and expenses just go booming on up and up and up, until litigation is almost just reserved for those who have the funds to be able to do it.

I think that this type of case has done more to discredit the law and the court with the general public than almost any other type of thing we handle, with the exception of the clamor that we always have concerning administration of criminal law. Other than that, it's these large, complicated cases that disgust the public, and they become upset about it.

Passage of the Omnibus Judgeship Bill in 1966

Sharp: Just to back you up a bit, I found out that when Michael Roche was chief judge in 1949 there was a groundswell of opinion to have more judges within the district. People in San Jose, San Diego, and Oakland clamored to get either new divisions there and/or new judges. But, it took until 1966, when an omnibus judgeship bill was passed in the U.S. Senate--SB1666.

Sharp: New divisions in Oakland and San Jose were created, a new district in San Diego, and new judges in Los Angeles.* I wonder how you might have been involved, since you were a sitting district judge then?

Wollenberg: Actually, new divisions, as such, were not created in San Jose and in Oakland. In that bill, the court was given permission to hold court in those places, that's all. We've been holding court in San Jose. We have a courthouse in the post office. We have a courtroom and a full set-up available as far as space is concerned in Oakland, but we have never assigned a full judge at time there, because there has never been a need for it as such. There just is no need in Oakland to hold cases.

San Jose's justification comes from the fact that they do have a fair volume of cases, and they do have a commuting distance. When it was easy to commute, it was about fifty minutes to an hour. Today, when you have San Jose people who do come into court here, they're frequently late and have been in traffic jams. Even with all the troubles that BART has, and with bridge traffic, Oakland is not more than twenty minutes--on the average--to a half an hour away from any office to Oakland to this courthouse. Mostly it can be done very quickly, for one thing, plus the fact that the volume of litigation is not as heavy in that area.

Sharp: What was the feeling among the San Francisco judges when there was public opinion supporting new judges for all of these areas? Was there some one feeling that the San Francisco judges had?

Wollenberg: Well, yes, I think so. I think that it's a reasonable thing. I think that you can administer much more efficiently and handle the court in a central area much better than you can with branch courts, division courts. You have to set up duplicate services all along the line. You'll have a judge in a branch court--if a case blows up or something happens that it can't proceed and must be continued--who may be sitting idle for a day or two before he can bring in another case to get it going.

Where you've got the courts all together, it's very simple to find another matter to go ahead with here, on ten minutes' notice. If you haven't got it on your own calendar, you can get it very quickly from another judge, and be prepared to proceed with matters.

*For more information on this subject, see Carl Baar, "When Judges Lobby: Congress and Court Administration" (doctoral dissertation, 1969, University of Chicago).

- Wollenberg: However, I'll say this, as far as our San Jose experience has been concerned, it has been a good one. There have not been any problems.
- Sharp: Do you remember what the feeling was on the part of the Ninth Circuit Judicial Council in regard to the new numbers of judges in different places?
- Wollenberg: Yes, they were in favor of it. Judge Richard H. Chambers was the chief circuit judge at the time, and when he was chief judge, he was pretty much the council. If he was in favor of it, they were in favor of it.
- Sharp: How do you mean that?
- Wollenberg: I mean that they left things pretty much in his hands. He assumed to take a lot of things, I imagine. I don't know. I think that most of them were happy to have him do it.
- Sharp: Did any of your colleagues on the district court, say, go to Washington to plead against the bill, or any of that kind of action?
- Wollenberg: No. I don't think the court took a position in connection with the bill of any kind. That had been going on a long time. Committees of the bar in Santa Clara County had come up to us and asked.

I may explain how bills of that kind are handled by the courts. Usually, a committee of Congress will ask the Judicial Conference of the United States for its opinion on a bill that will affect it. Always, as far as I know, they do it. The Judicial Conference then holds hearings, and gets together statistics and attempts to show what the filings are in an area how you are going to define jurisdiction, whether there are requirements or is it just for the convenience of lawyers.

That's about what it is here. It's not necessarily a convenience of litigants. Just as an example, it's very unusual for two residents of San Jose necessarily to be suing each other. In a federal court, it usually involves somebody from a far distance. The fact that cities are close enough means that there isn't any great inconvenience to go to one central place as against the other. It's mostly for convenience of the lawyer, that's all, so he can get out of his office and back to his office in a hurry.

Establishment of the Ninth Circuit Conference of Judges

Sharp: Are there other changes of this type that you experienced in the Northern District Court since you came on? Are there other changes in the system?

Wollenberg: Well, we've got more judges, as I pointed out. Six to twelve, now, active judges. Matters of that kind. The court of appeals is setting up--that is, the Judicial Council is setting up its rules more than it used to under the old regime. They're now taking their statutory authority and exerting it, in some cases to the good, and in some cases I don't think to the good. But that's not important.

Sharp: Could you explain more the kinds of rules that they have now, that they have set down in the past?

Wollenberg: An example as well as any--and it's probably the one of the biggest changes--is the annual Ninth Circuit Conference of Judges, which is provided for by statute. The Congress provides that in each circuit, once a year, there shall be these conferences of all the judges. The law requires the attendance of the judge at these conferences, unless he's excused. The excuse usually in this circuit would be from the chief judge of the circuit. He has the power to excuse him.

In the past, we met with lawyer delegates that were appointed by each judge had one appointee to the meetings. Now that has been changed in an attempt to get a better cross section of lawyer representatives as much as possible. Whether it's accomplished that or not, I have my doubts. But, what is done now is that in accordance with the number of judges in the district, there are allocated so many lawyer representatives. The judges of the court as a whole may nominate people for this position, after consultation with representatives of the bar. Then the Judicial Council, through its committees, makes the final selection of the lawyer delegates to the conference.

Sharp: What's the role, then, of the lawyer delegate?

Wollenberg: Well, he has a vote on resolutions. They discuss matters concerning administration of the courts. He has a right to express feelings these matters on committees and everything else. In the past, in that position, he had the right to vote. The charge was made that he always voted in accordance with the wishes of the judge who appointed him. I don't think that was necessarily true--I think it's too general to say. Certainly you got to appoint some who did, but also appointed so many that didn't.

Wollenberg: Right now, I think, they're in a position of confrontation. At the last conference, it was just simply stonewalled. It was the judges against the lawyer delegates.

Sharp: What was the issue?

Wollenberg: Well, any issue that might come along.

Sharp: So it became pretty political after all?

Wollenberg: Today it is very political. Maybe it's the nature of the beast, and it won't work out for a long time.

Sharp: Judge beast or the lawyer beast?

Wollenberg: That's right. The whole thing--you combine these beasts. But that's the way it is. I don't know that they've accomplished really what they wanted to accomplish. At this point, I'd say they have not. In fact, it's so structured, and so strictly and tightly structured, that it tends, in my opinion, to create this confrontation to a large extent. I don't think they know what to do.

I don't think that you need such a structured thing, because, after all, it's a place to create a forum for discussion and for just an expression of an opinion. At the end, it's a desire to express an opinion by resolution. It seems to me to be a simple enough objective not to structure it in such a way that the people there, by the very nature of how you set the thing up and its structure, are told what side they're on and how they should behave, in other words. That's what happens, I'm afraid.

It was shown rather pointedly this last time, because for the first time we had the bankruptcy judges as part of it now, under the Bankruptcy Act, with their status, they're now part. They never were before. So the judges had a great big injection of [judges]. The lawyers were pretty much snowed under as a result of it.

Sharp: How did the discussion go, then, with these bankruptcy judges?

Wollenberg: We had the finest discussions. No one was deprived of their rights to full discussion. At the time of the roll call, we knew pretty much how the roll call was going to come out. Discussions were all very good.

A Note on Use of Federal Jury Selection and Antitrust Laws

- Sharp: I want to talk about some of the federal laws that are used quite a bit in the district court. I mentioned in the letter to you that I had seen a note about the 1968 Federal Jury Selection and Service Act. As I understand the act, it eliminated what was called the key-man procedure, and then required that jurors be randomly selected from voter registration lists. This may or may not have meant changes in your federal juries.
- Wollenberg: We never had any problem with it, because those had been eliminated here long ago. We were taking our juries from random lists. They were being taken from the voter registration rolls, and in order not to eliminate people who weren't registered to vote but were citizens and entitled to be jurors, we would also take so many out of the telephone directories or something of that kind and add to it. We were doing that. That was the way our juries were being selected in any event, although we didn't have any written rule, as we said earlier. That was done by the clerk under order of the court to prepare these lists.
- Sharp: What sort of comments do you have about the way federal juries were selected then?
- Wollenberg: In that period?
- Sharp: Yes.
- Wollenberg: I really don't have much knowledge outside of this district. We didn't use the so-called key-person. We'd take a number, say from one to ten, and say take the tenth name, and then go through the voter registration list from every precinct. We would not skip any precincts, we'd take the entire list. Put that in the wheel, draw from that to get the number you'd use.
- Sharp: Was this procedure significantly different from superior court?
- Wollenberg: No, superior court picks its juries from the voter lists in the same manner. It was greatly different from when I was an assistant United States attorney. I think I mentioned that already. I think that's in our records now.
- Sharp: That was very enlightening for me.
- Wollenberg: Yes. That was a long time ago.

- Sharp: The next two acts that I wanted to ask you about are the Sherman Anti-Trust Act and the Clayton Act. These are not new acts; they've been around a really long time. I wondered what sort of changes in interpretations in this district you might have seen, since there weren't new acts that came and superseded them?
- Wollenberg: I don't know that you had a great interest in the use of the acts. You had lawyers and people becoming very litigious and [the Anti-Trust Act] suddenly became a very popular vehicle.
- [end tape 7, side 1; begin tape 7, side 2]
- Sharp: The prosecution of corporations under these acts--do you think this was more popular in San Francisco than in some of the other district courts that you know of?
- Wollenberg: I think you now have to think of this district. I haven't mentioned this before, but it is true. The Northern District of California, and San Francisco as its headquarters particularly, has been for many, many, many years one of the most well-rounded as far as the analysis of the type of business that we have. We have everything that anybody else has in the country, and in some things more than other districts around the United States. We have the best example here of a community that has grown up and has been part of what goes on in almost every other part of the world, there's some little bit of it here in San Francisco. You already know I was born here, but it is true.
- I think it can be pretty well demonstrated by the business of this court. We did have a large and sudden growth in our antitrust work. I think to a large extent that can be pretty much attributed to its growth, or a big contribution in any event, is the bar of San Francisco. It's a good bar. The plaintiff bar particularly with a leader who was our mayor, Mr. Joseph Alioto. He came from the government antitrust division to practice here, and soon was filing lots of lawsuits, and over many, many years was doing it. I think that had something to do with the influx of cases from lots of other people as well.
- A strong defense bar has grown up in San Francisco as well. There are large offices here that are very well equipped with experts in the field. The result of that has been the big antitrust business here.
- Sharp: It's been said that the courts have really formed antitrust law in the United States, because of the vagueness of the Sherman Act and the Clayton Act, and the fact that we don't have a long string of antitrust acts. We have a very short number.

Wollenberg: That's right, and they're very lacking in detail and broadly written. That's true. I think perhaps that's been more or less the American system for many, many years. They say the same thing about our constitution of the United States and many other things that we have. Because we are not tied up in strict rules and regulations of statutory nature, but we're flexible to move with the feeling of the people and the times. We do move rapidly with the feeling of the people. It changes quickly today, compared to what it used to be, and we move that way quickly when it changes. I think you can pretty much take the courts or any other movement and see the trends and tendencies.

Sharp: I think one of the leading questions that legal scholars in the United States deal with is the whole issue of judge-made law. I don't know if it's meant to be a touchy subject, but sometimes it is.

Wollenberg: Yes, it can be, and it is.

Sharp: And yet with antitrust law, just because of the way both those acts are written--

Wollenberg: Well, you have that. But the thing starts to grow--the substance of the antitrust law gets into the field of discovery so quickly, for example, and becomes so complicated. Somebody says they want to see all the records for the last twenty years for some tremendous corporation where papers just fly. It takes ages to go in and get it and get it out. With modern computers and so on, it's getting a lot faster. Nevertheless, that may have a lot to do with the increase in the business.

Because of the ability now to get in and get the stuff so quickly, with modern bookkeeping which includes computers and all those modern things, you can ask for almost anything and get it almost quickly, right away. Before, you'd ask for something and we'd have to tell everybody to take a rest for a year while a staff of a hundred people would go through and actually lift the file and read papers. That would take days or years, sometimes, to accomplish. Whether it meant anything when you were through with it was always a serious question, or how you were going to interpret it. You get it all, then somebody has to interpret it.

With a modern machine, all you have to do is ask a question about it, if you've got it in the bank, you get the answer, or the way you can get the answer.

The Discovery Process

Sharp: Do you have some feeling now about the use of discovery and how it has come along?

Wollenberg: I think there should be some limitations on how far discovery should go. Yes, I do have feelings. I think that that's what is responsible primarily for the increased cost of litigation. To a large extent, it's one way to force your opponent into a settlement by threatening him with years and millions of dollars of defense.

Sharp: Sort of a gatekeeping.

Wollenberg: Sure. The whole thing should be, I think, limited and controlled very, very closely by the judge.

Sharp: By the judge?

Wollenberg: Oh, yes. I don't know who else can do it. It's up to the judge to define. That's why you need the time at the beginning of the case to conference and to become educated in pretrial what the whole thing is about, disclosure of all the claims that are made in detail.

Then all of a sudden the court has passed the rule that you didn't have to be explicit in a complaint anymore. Just indicate you got a cause of action, and you're in court. You start from there, and by your discovery, you flesh out your complaint. Well, that's one theory that has opened up by the discovery. They go from one thing to another, looking for something to flesh out their complaint.

Sharp: It's sort of an onion peeling.

Wollenberg: That's right. And that's what's happened, expense-wise and all the rest. I'm not advocating that you have to have every little explicit little thing down. That's why I say you can't write that as a rule. A judge must have the authority, I think to go through, define, and explicitly set forth ultimately, limitations on discovery.

Sharp: So it's not an instance where the Judicial Council or the Judicial Conference or the state legislature could somehow make regulations regarding discovery? Rather, it has to be an individual?

Wollenberg: I don't think it can be. I don't think it could be properly done that way. Certain general rules can be set up; but when it comes down to how far are you going to go, then you've got to take a look at it and see what's there.

Wollenberg: It may be that you've got to say, "Okay, go ahead into this field and come back in thirty days and tell me what you've got. I want to see what you're getting, the type of stuff you're getting. If it's not there, let's desist right now." Then you're finished, as far as that's concerned. I think you have to do it.

Securities Regulation, Business Trends

Sharp: I wondered also what sort of changes in enforcement there had been of the 1933 Securities Act, which required that corporations who are seeking to sell their securities to public investors disclose the condition and status of their company. I wasn't sure how many kinds of cases you had had.

Wollenberg: Oh, certainly. You get a whole group of cases. Of course, concomitant along with that are the regulations of brokers, their sales pitches, their organization and notification, and market information, and so on. You have all of that.

Sharp: Since this 1933 act, there have been at least four or five acts that I know of to help further delimit and further regulate the activities of people involved in securities.

Wollenberg: That's right.

Sharp: That has made a whole lot more work for you at the district court.

Wollenberg: Oh, yes. It's so easy to say judge-made law. None of that was judge-made law. None of it. Not even at the start. You see, you have all of these things. That's true in the banking field to a large extent. It's not as extensive as in securities, generally, but certainly to some extent.

Sharp: What's this Bankruptcy Act? I was reading an article written by James Sargent, who was head of the SEC [Securities and Exchange Commission] for a long time. The SEC worked sometimes as advisors to federal district courts on corporate reorganization under Chapter X of the Bankruptcy Act.*

Wollenberg: Sure. We called them in all the time. In fact, you have to call them in at certain times.

*See James C. Sargent, "25 Years of SEC Regulation," The Commercial and Financial Chronicle, 190 (Aug. 20, 1959).

Sharp: Can you tell me how you would have worked with the SEC members under Chapter X?

Wollenberg: Well, you asked the SEC for a report, and you'd get one. Their council comes in, and they tell you what they think should be required, or they will look over a proposed agreement of settlement or something of that kind and give you an opinion on it. You have it from them. You bring them in as a party. They get notice of everything in the case, and their lawyers are here and present at all times, theoretically, of course, properly so, with the public interest only in mind.

They come in only in cases where there are public stockholders and public ownership of the profit, that's in Chapter X. They come in, I guess, to some extent in some of the others, like XI, but in any event it's in this X where they have these obligations, because it's directly in their line of interest and endeavor. The court can call in them, get their reports, decide what they're going to do. They have, as well, I believe, do they not-- a right of appeal. I don't know whether they do or not.

Sharp: I didn't see that; I'm not sure.

Wollenberg: Right now, I think they do. The public members.

Sharp: How did you find out about new laws on a regular basis that affected your work on the district court? Was that left to the law clerks to keep tabs on--?

Wollenberg: Proposed legislation? No, not in my court. We had nothing to do with that. I was a little different. You're going to get to that in a little while. I was a member of the Judicial Conference of the United States, so I was watching all the new laws. My particular interest was probation. But as a member of the conference, I was following everything else, sure. I had to vote on it.

Sharp: Yes, we can talk later, then, about your special interest in probation. I do want to get to it, and the kinds of changes that you saw.

Because you sat and are sitting as a district judge, you see American business in a really different light than a businessman. I wonder if you have any sense of special trends in the American business scene or the San Francisco business scene for the past twenty years or so. You've seen lots of mergers--that's a particular trend that you have seen--or other kinds of things?

Wollenberg: Well, it hasn't been mergers. Of course there have been a lot. We've had all kinds of conglomerates and all the rest of it. But that hasn't been particularly a matter of interest, except in where the government has stepped in. We haven't had too many of those cases, that involve mergers, although there have been some. We have, in the courts, naturally, quite a few of them.

It's a matter of a very close balance, I think. The law has recognized thus far that bigness alone is not a violation of any antitrust law, great success in some field or operation. Yet we've seen that the tendency to bigness has been the American way of business, eventually, and in so many of our essential industries--steel--[confusing passage deleted].

The tendency of big business is primarily, of course, to protect itself; which is proper, because in doing that, they're also protecting the economic well-being of the country to a large extent. And I'm not sounding like--which Wilson was it that said "What's good for General Motors is good for the world"?

Changes in Litigative Demands

Sharp: I wondered if you had a chance to look at the xeroxed section that I sent you from Goldman and Jahnige?*

Wollenberg: Yes, I have.

Sharp: I don't know if you found that too interesting, but I got some good questions out of it. From what I could tell, they were saying that there had been a pretty steady increase in the number of civil cases since the 1950s, and an especially large increase in habeas corpus cases.

Wollenberg: That's right.

Sharp: They said that they thought that this increase was a feedback effect from the U.S. Supreme Court decisions dealing with criminal procedure and the availability of federal habeas corpus of state prisoners.

Wollenberg: Yes, it should.

*See Sheldon Goldman and Thomas P. Jahnige, The Federal Courts as a Political System. New York: Harper and Row, 1971. See pp. 102-107 especially.

Sharp: I wondered if you had seen that in your court?

Wollenberg: Oh, yes. Although this court always did have a certain number of prisoner cases. Because in the Northern District of California for years (when I first came on the court) we had Alcatraz Penitentiary. The federal penitentiary, that is. We have San Quentin; we had in those days Folsom, because we went up to Sacramento and around; we had one down in Soledad. We also had a couple of state camps, one up in Susanville, and one up the Redwood Highway, Deuel Vocational Institution, and then when they first built the one at Vacaville. So we had around eight or ten big penal institutions. We used to be busy all the time, to a large extent. Then that increased.

There were times when capital punishment existed in California. Every time there was a gassing at San Quentin, we had a writ, usually the evening before or that morning. We'd come running in trying to stop the procedure.

The famous case we had was the young man--the books have been written about him--

Sharp: Caryl Chessman?

Wollenberg: Chessman. That came out of our court. Judge Goodman handled that.

Sharp: Did that cause quite a bit of turmoil?

Wollenberg: Yes, as a case, but I didn't have anything to do with it.

Sharp: I know it caused a lot at the politician end, because of Edmund G. Brown, Sr. being involved and so on.

Goldman and Jahnige also noted that there had been a shift away from the protection of property to the protection of civil rights, but that property rights still dominated the court. You've talked a lot about antitrust. I guess it was your feeling that property rights questions did dominate at least your cases on the district court.

Wollenberg: Oh, sure. Even though we've had a great influx of all the so-called civil rights things, I think property rights still is dominant. There's a very active business community here, with a going business. There are a lot more people in business that don't think they're having their civil rights impinged than there are people who think their civil rights are being impinged upon. They got other things to do, making a business.

Sharp: The article also talked about the Selective Service cases, with the Vietnam war especially. Steven Brick told me that you had been involved in some Selective Service cases. I wanted to talk about that in a bit.

One of the other comments that Goldman and Jahnige made was that few cases, they said, were really actually resolved by trial--something a little over 10 percent of civil cases, and less than 20 percent of criminal cases.

Wollenberg: I think that's about right. Maybe even more than they think. That's the usual thing. The court would be snowed under if they had to try everything that came along. That would be impossible.

Settlement of cases is always urged and for the most part, it's the best way of disposition.

Sharp: Going into court is actually the last resort--if it cannot be worked out any other way?

Wollenberg: Any litigant ought to feel that way. Litigation is not the ideal. It's the necessary thing in many, many cases to finally litigate a case and settle it by judgment. Particularly the civil cases and private disputes--all of them should be somehow or other proposed above the line.

Additional Thoughts

Sharp: How does your current role as a senior judge has differed from your earlier years. You seem to be very busy.

Wollenberg: It's different in that I haven't the case load that I had before. This came this morning. This is a monthly report of civil cases. It shows that--this is the month of August--the first of August I had a caseload of only twenty-two cases. A regular active judge--as an example we could take Spencer Williams with 370; Robert H. Schnacke, 315; Stanley A. Weigel, 220; Ingram, 341; William W. Schwarzer, 182; and the new judges. They've got plenty of cases. So that shows you the difference. The end of the prayers, I ended up with the same, and I disposed with two cases in office. I got two new cases. I came out even. That's what I used to be carrying, a couple hundred! Those are not new per month. That's the total caseload.

Sharp: Over how long a period might that go?

Wollenberg: That may go back as far as--oh, you know, there are cases that are on the books since '76, '75 or '73.

Sharp: So it stays on as your carrying it until it's disposed of?

Wollenberg: Yes.. 'Sure. It stays on the calendar. Our court today has pending cases, if you're interested in that, at the close of August, 3677 cases at this point.

Now, this is unusual, and I don't know the answer. We have a net gain this time, because at the beginning of the month we were 3746. We terminated 456 cases and new filings for the month of August were 387 cases total. So we have a good gain there, which is unusual. It may be that the new judges were on for their first thirty days or something like that.

Sharp: So they were pretty busy.

Wollenberg: They had dispositions. [counting] Thirteen, sixteen and eight. Yes. Some were settlements as we find out. Probably 80 percent of all those, or better, were settlements. Every case I try, I have a conference which is known as the settlement conference. They have notice they've got to come out here and tell me what they've settled the case for, why they haven't settled it, how far apart they are, what it's all about, what the troubles are. We attempt to settle the case. Most judges do that.

Sharp: A different kind of conference than the pretrial conference?

Wollenberg: Part of it. It could be part of the pretrial conference. Yes, it's different, because in the pretrial conference you're talking about how you're really going to try the case. Who are your witnesses? What are they going to testify to?

I make the lawyer tell the other side who are his witnesses and what that witness is going to testify to. If he hasn't told him, or told him incorrectly or left something out, I won't allow the witness to testify to it. He's got to disclose. It's not a game. He's got to know, so that you get an intelligent cross-examination and he knows what witnesses to call in opposition and what not to call. You're not wasting a lot of time and money and effort.

Sharp: I think we might talk about some of these other things later on.

I have questions about your role on the Judicial Conference, and about your three-judge court experiences, too.

Sharp: What other parts of your district court career would you like to talk about?

Wollenberg: There really hasn't been much else. I worked on those committees with the conference; the relationship with the appellate judges, lots of them. Because I've worked in the national scene in the Judicial Conference of the United States, I've met a lot of judges all over the country. On my work in Probation Committee, I've been in many courts around the country and met in conferences with judges from all over the United States.

Sharp: Is that how you met Judge Frank Johnson?*

Wollenberg: Yes. We were both on the committee. When the committee was first created, he and I were both members.

Sharp: That's really all the questions that I had. I thought we might talk off tape about what case names you have in mind, or if you need to work that up, you can send me a list.

[end tape 8, side 1]

*Judge Frank M. Johnson is a district court judge in Montgomery, Alabama.

VI CAREER AS A NORTHERN DISTRICT COURT JUDGE, PART I

[Interview 5: October 16, 1980]

[begin tape 9, side 1]

The Appointment, 1958

Sharp: I thought we would start just by talking a bit about the process of how you became a district judge. That's sort of a basic place to begin.

Wollenberg: Sure. What I went through I can tell you, yes.

Sharp: How long had you been interested in becoming a federal judge?

Wollenberg: That's pretty difficult to say--how long I was actually interested in it. I suppose I had an interest in it during the whole period I had served in the United States attorney's office. I had been in contact with the federal courts, closely in contact with them for about six years in the United States attorney's office.

I had continued my contact after I left the United States attorney's office in some amount of federal practice. Not a great amount, but some. I had acquaintance with the federal court judges and officials and staff, from my contacts with them previously. So I had an interest in the federal court.

I didn't pursue that any further than that I had an interest, period, until I was on the superior court for approximately ten years and an opening occurred--two openings occurred. In thinking it over, I thought that I should contact our Senators, both of whom I knew, and tell them I was interested. That's what I did.

One of them, the senior one, Senator William Knowland, requested that I write him a letter setting forth why I felt what I felt and what I'd done in my career, which I did. I then

Wollenberg: talked with him on the telephone in Washington at one time, and told him that I was very interested. I knew he was about to act in the matter, and I wanted his approval for the position.

He told me I was awfully late in getting started, a lot of other people had applied and so forth. I remember a remark he made, something about, "Why, there's a line clear from here to Baltimore--" "From my desk to Baltimore"--some statement of that kind--"all of who want consideration."

I said, "That's great. The more the merrier. You'll get a good man. I'm at the head of that line, though. I'm standing right now [pounds desk for emphasis] in front of your desk. It's up to you to give me the answer. I'm not late. I'm in the front of the line, not in the back of the line."

He said, "Okay, Al, we'll think about it."

The next day he phoned me and told me he'd sent my name into the president. That's all I had to do. I didn't talk to any people. I didn't bring in any political people or have anyone else talk to Knowland. I talked to him myself. No one else at my request did, and I never heard of anyone that did. There may have been others.

I likewise talked to Senator Thomas Kuchel. Senator Kuchel and I had served together in the legislature. We were always very good friends. He explained to me, "Well, Bill Knowland's the senior. It's what he says, Al. You can rest assured that there'll be no objections from me. In fact, if I can say anything about you, I'll be happy to do it if he talks to me about you." That was true. That's it.

The process after that was that the president sent my name very quickly after he received it. It didn't lay around the White House very long. They made an investigation, of course, an FBI investigation. I'm not sure of the timing--it seems to me it was later to the Senate, that the bar association, the ABA investigation took place. That was sent on to the Senate Committee.

A few weeks later, I was requested to come to Washington for a committee hearing, which I did. It was a one-man committee that heard the matter.

Sharp: One man?

Wollenberg: Yes. That was from the committee who did it. He was Senator William Jenner of Indiana. Jenner was there because Senator James Eastland--he apologized for Eastland's absence and said that Eastland was busy in his home state and couldn't be there.

Wollenberg: So Jenner held the hearing, at which both Senator Knowland and Senator Kuchel attended. As I recall, that's all the people who were in the room, and myself. It was one of the Senate hearing rooms. I was not a big drawing card. [laughter]

Sharp: No big television cameras?

Wollenberg: No big television, no big press jamming the doors and screaming for a statement or anything like that. It went through in about ten, fifteen minutes. That was it. Senator Jenner was very considerate. He said I would hear from them, not to wait around in Washington, no need of it. If they wanted anything, they could get in touch with me.

So I went over to New York and visited with Mrs. Wollenberg and visited my daughter. I stayed there about three days. We decided to take a vacation and buy a car and drive home. She had a brother who was in the advertising business, who was at that time connected with Chrysler. We bought a Plymouth and we started home.

The first night we stayed with friends. My daughter knew these people well in Pennsylvania, in Harrisburg. A phone call came to my daughter from the San Francisco Chronicle, from Squire Behrens, who traced me to my daughter's home in New York. That's as far as he traced me. She told him where I was in Harrisburg. All he wanted to do was to tell me that it had come over the wire that the Senate had confirmed me, and he wanted me to know it. He figured maybe I hadn't heard it. He was right, I hadn't. That was the first I knew that I had been confirmed.

I came on home, taking my time, finished the vacation. When I got here, I made arrangements for the induction. The papers came out, and that was the whole thing.

Sharp: What went through your mind when Squire Behrens told you that you had gotten the appointment?

Wollenberg: I was very happy. That I had been confirmed by the Senate?

Sharp: Yes.

Wollenberg: I didn't have any doubts or anything that I was going to be confirmed. Nothing had come up at the hearing to disturb it. In addition to that, the assistant attorney general gave a--

Sharp: William Rogers?

Wollenberg: It was Walsh at that time.

Sharp: Lawrence Walsh.

Wollenberg: Judge Walsh. He's now what--attorney for IBM, I think? Or general counsel?

Sharp: Was he someone that you had known?

Wollenberg: No. I met him at that occasion when I was in Washington

Sharp: What was his role?

Wollenberg: He had the same office--then, he had--that Judge Charles Renfrew has now with the U.S. attorney general. That is, he's the assistant attorney general. He's the chief deputy--they don't call him assistant. He's the deputy attorney general, and that office has always had the role of investigating and making suggestions to the president as to the relationship. He had done that when Senator Knowland sent my name in. He had done it and satisfied himself for San Francisco.

Sharp: This period was a very interesting one for the American Bar Association. Bernard Segal was the chairman of the ABA committee on the federal judiciary from 1956 through 1963, so he was chairman when your appointment came up. They were just beginning to get very interested in the quality of the appointments to the federal bench. Were you aware of this change in the ABA and sort of what they were--?

Wollenberg: Yes. They had this national committee, and the Pacific Coast member at that time was Eugene Bennett of the Pillsbury, Madison, and Sutro office. I knew Gene Bennett from my early days as an assistant U.S. attorney. He had also been an assistant around that time. We were well acquainted with each other; knew each other well.

Gene Bennett was the committee member who, when my name was sent to the ABA--it's the only name they had--he investigated around the city and made his report, which was a very complimentary report.

Sharp: Did he talk with you about it as well?

Wollenberg: Oh, yes. He asked me some things about what I would do in cases and so forth.

Sharp: Did it seem like a real interview?

Wollenberg: Oh, yes, it was. He's very conscientious and very thorough in his questioning. And in other people that he went to, I thought that way.

- Sharp: It's been commented that it's common to exaggerate the role of the U.S. Senate in the appointment of a federal judge. I wondered who you thought, of all the groups you deal with during the appointment process, who seemed to be the most important in terms of your getting the appointment. Was it Senator Knowland?
- Wollenberg: I think it was Knowland. I think it was the original recommendation to the president. See, at that time, they were of the same party, both Senators were Republican. Eisenhower was president. It's a different situation in every appointment. They had been working together. Knowland, I guess maybe he was the Republican floor leader--no, I think he was the assistant at that time. The Senator from Illinois--Everett Dirksen was still alive.* I think he was. Knowland succeeded him. He had to have been the assistant.
- Sharp: What was the most interesting part of the appointment process?
- Wollenberg: I guess the contacts for the first time that I had of a personal nature which concerned me, with Washington. That was all new to me. I had never had any real contacts in Washington, other than casual. This was the first time I had direct personal interest.
- Sharp: Had you met President Eisenhower before?
- Wollenberg: Yes, my first meeting with President Eisenhower had been at the 1952 convention in Chicago. I was there with Earl Warren, as you know. I have interviews with Earl Warren. But I didn't meet him [Eisenhower] other than very casually; he didn't have any recollection. He had no reason to.
- Sharp: It didn't really stick in his mind?
- Wollenberg: That I'm sure of. Nothing happened to stick anything in it.

The Court in 1958, Class Action, and Committee Work

- Sharp: I thought we might shift now and talk about the period right after your appointment. The article I sent you from Brief Case on Judge Goodman--he sounds like he would have been a very interesting fellow.**

*Dirksen was elected Republican whip of the U.S. Senate in 1957. He became minority leader in 1959, and he died in 1969.

**See Brief Case, May 1958, p. 6, for an article by James Martin MacInnis, "Louis E. Goodman: An Hour With the Chief Federal Judge."

Wollenberg: Louie Goodman was, yes.

Sharp: I wondered what your first impressions of him were?

Wollenberg: I'd known him for years. I'd known him when he was in general practice, before he was on the bench. I'd had association with him in connection with legal matters as a lawyer when he was a lawyer. Then during my period in the United States attorney's office I had contacts with Judge Goodman.

He was a very warm person with everybody. He was not what you call a hanging judge in any sense of the word. We would say he was a very thoughtful and considerate person in connection with his judicial duties, and very conscientious about trying to keep the calendars up and run an efficient courtroom and a whole court. Problems with individual judges--those were his problems. He worked hard at trying to get everything going properly.

Sharp: I wonder how you got to know the other judges on the bench once you got to the district court.

Wollenberg: Well, if we go down the list of those on the bench, it's interesting to this extent. I served in the legislature with Oliver Carter for about ten years. I worked with Oliver Carter in the legislature on legislation. We knew each other quite well in Sacramento.

I lived next door to Judge George Harris. For years we had homes next to each other. We ran against each other for the legislature. We knew each other for many, many years.

Judge Ed Murphy, who was on the bench at that time, had been a superior court judge during the period I had been a superior court judge. He'd been active in the Culbert Olson administration while I was in the legislature. So I knew Ed Murphy.

Judge Oliver Hamlin, from Oakland, I knew quite well in connection with working with Earl Warren over many, many years. He and Earl Warren were intimate, very close friends. The families were as well. That's about it. That was the court.

Judge Sherrill Halbert was in Sacramento most of the time; but I also knew him in connection with Republican politics in the state. He came from down in the valley, Fresno or Modesto, I'm not sure. But down in the valley. That's about it.

Sharp: I should have brought you the list of who came on with you. I forgot about that.

Wollenberg: At my time, you mean?

Sharp: Yes.

Wollenberg: Those judges that came on were Eisenhower appointees--we could take that just as a group--were Halbert, Hamlin and myself in that period, up to that time.

Sharp: That's what I thought. Which of all the experiences that you had--being in the assembly, the U.S. attorney's office, superior court judge and so on--were the most important, do you think, in preparing you for the position of district court judge?

Wollenberg: Well, number one, I had been a judge in the superior court in the state system for ten years. Actually, except for the type of case you have, and the rules are somewhat a little different, but actually, they're talking about the same subject matter. They arrive at a result in different ways, by the rules. I guess the experience of going on the court, the superior court.

I guess it was the legislature that was the most valuable experience in the contacting of people that I had. I think it's an invaluable experience for anyone to know what they're doing, and handle it properly. There's nothing to compare with legislative experience, in my opinion, to understand people.

People have problems. You deal with the problems of the people direct. I don't mean specific disputes between people as you do as a judge. Those are problems too. But in the legislature, you're dealing with the people as a whole, their problems and their reactions to their problems, and you have to learn how to handle them as individuals as well as the general matters in which they're interested in as organizations. I don't think there's any experience to compare with it. It's fascinating; it's great.

Sharp: It sure sounds like it, just from what I know about the cases that you've worked on since you've been on the district court, and just the way you've talked about it before. It seems like you've had a good time.

Wollenberg: That's true. I have in all the positions I've held--the legislative as well as judicial.

Sharp: Is there anything that you would have liked to have learned before you got to the district court?

Wollenberg: Oh, I might have liked to perhaps been a better student or, I'd liked to have had a better facility for writing and expressing myself, and so on.

Sharp: I heard that the federal court system began to offer some new introduction seminars to new federal district court judges during the period that you were appointed. I wondered if you'd gone to any of them.

Wollenberg: It came after. I did go to some. I went to every one that was available. They did have seminars. They were large, and with all judges, not necessarily for newly appointed, although they designated some as for newly appointed. For example, antitrust cases, which we were experienced with. We had a very good seminar. It went for about five days. That was just when I was appointed. It was held at Stanford University. We lived in the dormitories there in the summer. School was out. We had one of the nice dorms.

Sharp: Was it helpful?

Wollenberg: Yes. They had excellent speakers. From all over the country came judges with experience as well as university people, academic people. And that was very helpful. Sure.

Sharp: Have you ever taught at any of these?

Wollenberg: I have given many in later years. Not at this time. I have been on the faculty, but it's not necessarily much of a teaching. I lectured and have taken part in a great many round table discussions and questions and answers. I have been questioned by judges and in given situations.

Sharp: Back to the article on Judge Goodman, it mentioned the Keating committee of 1953. I wondered if you could tell me a bit about that committee?

Wollenberg: Well, let's see. '53. Keating came out here.* They came and held hearings. What they were after with Goodman I'm trying to think. They were questioning him about some sentencing or something he'd done. He properly refused to answer them.

They held their meetings in the supervisors' chambers in the San Francisco City Hall, I know that. At that time, I was a superior judge.

Judge Goodman came over early in the morning and spent the day really in my chambers, because he was under subpoena. If it was necessary for him to appear, he had a statement he was going

*This may be Kenneth Keating, the congressman from New York.

Wollenberg: to read and then leave. He was rather excited and upset and so on and so forth. I was trying a case; I was busy on the bench and in and out of the chambers. He spent most of the day sitting and waiting, getting worried at what they were doing downstairs. He was using my chambers as sort of a headquarters.

As to what they were doing--the committee was--you know, this was the period of starting Communist investigations. What specifically were they after here?

Sharp: Here it says, "In 1953, the Keating committee sat in San Francisco obviously to place in an invidious light the failure here to obtain convictions in the supposed income tax scandals of the previous administration."*

Wollenberg: Yes, that's right. In San Francisco here, we'd had what they all generally speak of as sort of a runaway grand jury. They were going after everybody and undertaking to do all these things on their own without guidance or anything. Judge Goodman at that time had called them in and discharged them. The judge has that authority, to fire a grand jury, and that's what he did.

This committee was investigating what he knew, and why he did it and so on. The committee was going to ask him all of these questions. He took the attitude that as a judge, they had no authority over him to question his judicial acts. What he did and why he did it he didn't have to explain to anybody. What he did was a matter of record and was available. Why he did it--if he wrote a memo and gave a reason at the time he did it, that's what it was. That's it. That was his attitude. He refused to appear. Nothing ever came of the charges.

Sharp: Did the committee come to any conclusions about what was happening in San Francisco?

Wollenberg: I don't recall. I don't think in their final reports or anything they did. The thing was dropped. I don't recall that anything ever happened.

Later, there were some indictments of some individuals somehow connected, but not with the things that the committee was after at that time.

Sharp: I see.

*MacInnis, "Louis E. Goodman: An Hour With the Chief Federal Judge," p. 6.

- Sharp: This article also mentions several other issues which Goodman had spoken about. I wondered how these issues were addressed by the other members in the district court. He talked about the jury system at the federal trial level. Apparently Judge Jerome Frank had spoken out against it, and Judge Goodman then was supporting the use of the jury. Was this a source of much discussion on the district court level in the fifties?
- Wollenberg: Not really. Frank's book I don't think ever really gave rise to anything other than comment by the judges. There may have been a few of them agreed with it, but for the most part, I don't think the judges did. I think they were for the jury system.
- Sharp: I know that you've talked about it before. I wondered if that was part of this discussion that was going around at the time about the use of the jury at the federal trial level, whether it was really worthwhile.
- Wollenberg: In connection with certain issues, we've had discussions about it, yes. There's a certain feeling among some judges that, for instance, juries are not competent in these complicated antitrust actions, things of that kind. That's what Frank was saying in connection with the whole jury system. He thought a group of experts would be better. If you had a problem with a contract that concerned, did a machine do what it was supposed to do or not, he thought you should get some experts and let them decide the case rather than just get their opinion.
- Sharp: That's pretty radical.
- Wollenberg: Yes, sure. Well, there are some legal systems in the world that do have experts serve as judges or with judges, sitting with judges advising them openly instead of just as we use them.
- [end tape 9, side 1; begin tape 9, side 2]
- Sharp: I wondered if there was also an important controversy among the district court members at this time regarding use of the Federal Rules of Civil Procedure.
- Wollenberg: Yes. Well, of course, the main controversy there was originally whether the courts had the power to make their own rules, procedure and so forth, or whether that was a statutory right of Congress to tell you how you ran the courts. Eventually it was determined that the Judicial Conference of judges through the [U.S.] Supreme Court would do these things. I don't think there was a controversy among judges that there should be other than their right to make rules and procedures and so forth.
- Sharp: But the Federal Rules of Civil Procedure were legislatively enacted statutes?

Wollenberg: Yes. That was the provision by statute that the court should enact the rule, that it then was published. Unless the Congress debates it for a certain period of time, it becomes law. That's the way it is composed.

Sharp: I was looking at the Federal Rules of Civil Procedure, and I saw Rule 23 because I wanted to ask you later about class action. It tries to define exactly what a class action suit can be, and gives you guidelines to go by. Is that how you use the rules, as guidelines?

Wollenberg: Sure, that's right. And, they're published so that the attorney who comes in knows what he has to do.

The simpler things to talk about would be: well, you've got five days to file a cross bill after you get a judgment, and so many days after that to contest it for the other side to have a hearing. Things of that kind.

Sharp: I wonder what elements of the district court bureaucracy you got into besides your caseload. Were there committees that you had to be a member of as part of your work as a district court judge?

Wollenberg: Well, yes, there were, but I suppose you could refuse the committee appointment. It was in about '63 or '64 that I was appointed a member of the Probation Committee by the chief justice of the Judicial Conference--this is just an example. Then I think the chief of the Ninth Circuit had me appointed on committees. I served on a committee concerning the rules of evidence for years in the Ninth Circuit. I served on a committee that had to do with just general housekeeping of things on the Ninth Circuit. These are things that I undertook to do and was appointed.

Sharp: Are there committees that were just part of the district court here?

Wollenberg: Oh, yes. I was early on appointed, for example, as the liaison for the court with the Probation Department and also, for a while, with the clerk's office. And so on, things of that kind.

Sharp: Tell me a bit about how you were liaison with the Probation Department?

Wollenberg: The court, for example, makes appointments--deputy, or probation officers as they need them. Under the law, they're appointed by the court. For example, the chief would come to me with someone he thought was adequate for the position available, that he thought would fill it properly. He'd give me the full information

Wollenberg: or if he had two or three individuals, he give them to me, and we would talk them over. Then at a judge's meeting I'd report to the judges who they were and make a recommendation as to who would be appointed. Usually, it was always followed.

Sharp: How much time did these in-house, within the district court committee responsibilities, take?

Wollenberg: They could take a good deal of time. You take up a lot of time. You learn to do them as you go along, and you do learn how to do that.

That's another thing you learn by being a legislator--how to handle committee work.

Sharp: I'll ask you about those larger committees, the Ninth Circuit committees, later on, when we talk about some more of the administration and the federal court system as a whole.

Antitrust: The Presidio, Swift, and Marks Cases

Sharp: I wanted to get into now the two areas of substantive law: antitrust and bankruptcy. I need you, first of all, to tell me what a federal trade case is.

Wollenberg: Well, the Federal Trade Commission--you know generally what that is--has jurisdiction over many, many, many things in commerce. It has great powers over people who are in business among the many states--interstate.

There are provisions in the statute for review by the courts of the commission's work and so on. So you start with that as a federal trade case.

The Department of Justice has been given the power in the antitrust deals. In addition to that, the Federal Trade Commission can consider certain things as being in violation of their antitrust laws, and can act accordingly. The review of this, or the enforcement of it in some cases, is in the hands of the courts. That's where these cases come from.

Sharp: If we talk about U.S. v. Blue Diamond Corp., et al*--I wondered if you could just give me your view of what you saw going on in this case?

*Cited as a 1961 Federal Trade Case, #69,901.

Wollenberg: This was a consent decree, as I recall. They sat down, these parties did, and they worked this out in detail. It met with the approval of everybody, including the enforcement offices of the United States. It appeared to be, there was no question, but that it was an arm's length agreement that had been hammered out in accordance with the statute. I approved it, and that was the extent of it. I did not have any long hearings or anything of that kind. I did not know the inner workings of the case. I did know what these various reinforcing steel bar fabricators had been charged with. They were saying that they would not do that again, and a lot of other things. By the terms of the agreement, should they be found in violation, they could be punished directly and also for contempt, for failing to adhere to the orders of the court.

Sharp: But the final judgment that is here is your more or less agreeing to what they already come up with?

Wollenberg: That's correct, I did. Certainly. I signed it.

Sharp: So it was not a decision in that sense.

Wollenberg: No, it was not--[pauses; begins to read] "[C]onsenting defendants having appeared...and...filed their answers to the complaint denying its substantive allegations and any violations of law; and the plaintiff and the consenting defendants by their respective attorneys having severally consented to the entry of this Final Judgment without admission by any party with respect to any issue herein, and the Court having considered the matter and being duly advised."

"Now, therefore, before any testimony has been taken herein, and upon the consent of the plaintiff and the consenting defendants hereto, it is hereby ordered and adjudged as follows:

"This court has jurisdiction...."

The "consenting defendant fabricators" means these various firms that are named. And the association--it defines that. It defines what states compose the "western states," what the term "rebar" means; and "foreign rebars," and what "fabrication" means, and what a "fabricator" is. Not a liar, but he's a guy who makes rebars. And, "the agreement or understanding to allocate and divide fabrication jobs."*

*All of these quotes are extracted from the judgment in this case at pp. 77,579-77,580.

Sharp: But the parties in the case had drawn up their own agreement then?

Wollenberg: That's correct.

Sharp: And had brought that to you?

Wollenberg: That's right. Signed and agreed--they all signed and said "We're bound by this. I entered it as a judgment."

Sharp: Was this a typical settlement case?

Wollenberg: I think so.

Sharp: Is there more of this kind of final judgment that goes on than a real decision, especially in antitrust situations?

Wollenberg: A great deal of this does go on. I don't that you'd say more. I have no idea. Many cases are settled in this manner, just as this was.

Sharp: Was this a recent development, in the sixties, this kind of final judgment?

Wollenberg: They were doing this for many years. Of course, it was early fifties, sixties, in there, that antitrust became a used thing. It had been on the books, but we didn't have any, except for these big cases that established certain principles. It was later that these came along in volume.

Sharp: The next case, which really isn't a case as much as it is pretrial order, involves the Presidio Golf Club of San Francisco.*

Wollenberg: Oh, yes. That I recall.

Sharp: There are a couple of reasons I wanted to ask you about it. The litigants seem very interesting, to begin with. What was going on in this action was your determination that this could be a class action suit, is that right?

Wollenberg: Yes, that's right.

Sharp: That issue had to be determined.

*See Presidio Golf Club of San Francisco, Inc., Pacific Western Hotels, Inc., d/b/a The Commodore Hotel, Thomasser & Associates, Inc., The Sails Restaurant, Inc., v. National Service Industries, Inc., et al., 1972 Federal Trade Case, #74,129, p. 92,724.

- Wollenberg: The class was the people who generally had towel service or bedding service or something like that from these laundries. There were so many laundries in it that there were an awful lot of people that are involved in the case. Lawyers came from all over.
- Sharp: Are there some special considerations involved in class action when violation of the Sherman Act is involved?
- Wollenberg: Well, the same thing in all. I mean you have to consider those various things that are set forth in Rule 23 and the sub-sections, and go down the line. They don't just say, "Consider the number of people," they used the term "numerosity" in discussing it. That's something that law professors have loaded in their articles. You get all sorts of problems that arise out of it. The various other things required to be it, you must determine: representation, who it's representing, and is able to; malpractice--
- Sharp: We get into that in the Stephen Marks v. the San Francisco Real Estate Board.*
- Wollenberg: Real Estate Board? That's right. There is also a case down south against the telephone company. You just have too many people. You can't do it; you can't have that; you can't imagine a thing like this.
- Sharp: Do you have special feelings about class action?
- Wollenberg: Yes. Class actions, I think, have to be very, very carefully determined for many reasons. Numbers become impossible when they get into so many, the judgment becomes almost overbearing. It gets into billions [of dollars] in some situations. When you treble it in antitrust and all the rest goes into it, it becomes a pretty hard and cumbersome thing.

Then, of course, Congress has played around with it so much. In the electrical cases, GE and Westinghouse, had the fines. Those were the first great big fines; I forget the amounts, but it was much larger. Well, Congress turned around and now lets them deduct that as a business expense from income tax right away. So what difference does it make? If the company pays a fine, they take it off and the government pays it for them right away.

*See Stephen H. Marks v. San Francisco Real Estate Board, et al., Federal Trade Case #74,130, 1972, p. 92,725.

Wollenberg: So these people who get these big judgments against them or fines against them in antitrust can take care of them on their income tax.

Sharp: Wouldn't that make you more likely to accept a broader class action suits?

Wollenberg: It gets to a point where it's ridiculous if it get so broad that it gets out of hand completely. No.

Of course, unless there are some stipulations and agreements along the line, everybody's claim is a little different. If you and I can be in the same class action, we've both been injured by it. But, when it comes to proving your damage and proving my damage, it's a separate action to that extent, anyway. We've got to go through all of that, and it complicates everything. It complicates the recovery; in some cases, can make it astronomical.

Sharp: I didn't find what happened to this case, if it was actually tried later or what was going on.

Wollenberg: My recollection is that they threw them out of business before they got up to trial. Could be checked.

Sharp: This National Service Industries seemed like quite a large operation. I wondered if this case was a long time in formation.

Wollenberg: It was a big thing to that extent. It got so large, the way it looked so large is that every little laundry had a lawyer. They all got into the thing as representative of their own defendant. So that's one reason it became cumbersome. The cases against each one turned out a little different than the other. It became a very serious question and situation.

Sharp: Are there any particular details that you remember about the case and how it all came up?

Wollenberg: It came up because of the fact that these people, Presidio Golf Club, or whether it be a hotel chain, or an individual hotel, or a lot of little restaurants, all got their napkins and tablecloths--the restaurants do--on a contract. You couldn't get a different price from any of the laundries that ran that service; it was all the same. That charge was conspiracy to keep it that way.

Sharp: Was this in the press a lot, do you remember?

Wollenberg: Yes, but not in a big way. It had little reports in the press, but it was not a case followed as a matter of great interest.

Sharp: The next case is U.S. v. Swift Instruments, Inc.* I found this one very interesting. What I came up with was that Swift was prohibited, in this judgment, from suggesting the prices that dealers should sell their microscopes at; and that they couldn't change the bid to sell to schools or to other customers because of the price that the dealer decided to sell them at; and, that they couldn't establish a limit to the kinds of customers that the dealers could sell microscopes to. But, Swift could unilaterally suggest prices that people should sell the microscopes at, but they couldn't control the selling.

Wollenberg: Yes, that's all it involved, just microscopes. There was another case I guess I had in mind involving a different type of microscope. This is just that, that Swift was controlling, it charged, the price for their microscopes all over. In the hands of dealers, they apparently were the big manufacturer with a big piece of the market, if not most of the market. I didn't know that; I don't know it now. But apparently that's proved.

They're not talking about monopoly. Just price-fixing. Class of customers, and division of territories, and things of that kind.

No, that's all. I don't think there's any more to it than just what you see on the face of it. It was not tried--I had no feel of it from the trial point. And apparently, it was not in court in many motions and fighting on discovery and things of that kind. It came to an agreement quickly.

Sharp: So this was a consent similar to the other one?

Wollenberg: Yes. Exactly. See, it's a case by the United States against these companies. It's not an individual, private antitrust case. It's an enforcement case, and direct.

So they agreed with the United States to end their disagreement in this manner. That's all there is to it, that I know of. I had it presented to me.

Sharp: Were these cases part of the vigorous antitrust prosecutions that were occurring in San Francisco in the sixties and early seventies?

*See United States v. Swift Instruments, Inc., 1973, Federal Trade Cases, #74,762, at p. 95,316.

Wollenberg: I guess so, sure. This was '73 that this was entered, December of '73. These were the cases that were coming along. I had a lot of them on the calendar, the district calendar, antitrust.

Sharp: Do you have any sense of how you developed your ideas about antitrust?

Wollenberg: Only, I guess, through handling and seeing what occurred with them and so on. I did have an unsatisfactory feeling as to the proof. There is an awful lot of economics involved in the evidence: what are markets in butter, and so on. We get into a whole field that becomes technically foggy unless you have a background and an education, or go to work and do some studying in preparation of it. So you get a feeling the jurors, therefore, are not the best solution in the cases. I don't know that that's necessarily true. Maybe they are. But that's a point of dismissal.

As to treble damages, because of the rules concerning damages to begin with, they run high, and they run terrifically high. Whether that is the way to curtail it, I don't know. It hasn't proven to be, particularly when Congress turns around and says you can take them off your tax payment as a business expense. It doesn't mean much. People have been damaged to the extent that the courts accept those rules of proof of damage very loosely, very light proof.

Sharp: In the case of Stephen Marks v. the San Francisco Real Estate Board, I saw it very interesting that you could so clearly delimit the class, Stephen Marks and the rest of the people that could bring this suit.

Wollenberg: Well, you had some problems now. [pauses to read] Yes, you had the right under Rule 23 to set forth the class and see who certified it.

[end tape 9, side 2; begin tape 10, side 1]

Sharp: The Marks case seemed to so clearly set out the two-step process of first, deciding if this could be a class action, and, then saying what the class is.

Wollenberg: That's right. Now, your question is how do you come to the conclusion about that--? Well, I'll try to state that what he was interested in really was Marin County. He was interested in residential properties, not business properties; and that firms here and there were not the same firms, there were different people involved. So if there was a conspiracy to fix fees for real estate agents in sales, they were separate conspiracies and should be filed separately. So I limited it to Marin County.

- Sharp: Is figuring out exactly what the class is the main problem in many class action suits?
- Wollenberg: You mean the main problem in deciding whether it is a class action or not?
- Sharp: Yes.
- Wollenberg: Well, of course that's very important; but all the other matters that go there, are set up in Rule 23 are just as important and apply.
- Sharp: Had there been a real surge in class action suits?
- Wollenberg: Oh, yes, there had been. We had a lot of them that came along on a big number of people.
- Sharp: Is there some specific reason for that, do you think?
- Wollenberg: Yes, attorney's fees. That was the main thing. An attorney can get a class action suit, and he gets enough money into the pot, then he has to make a big fat fee. Sure.

Bankruptcy: Don Silverthorne, In re Continental Mortgage Investors

- Sharp: I had thought that we would talk about some of the bankruptcy area, but I wanted to get your thoughts on some of the ideas that Judge Charles Wyzanski had. So, I thought maybe we'd just skip to that and do the bankruptcy later.
- Wollenberg: Don Silverthorne and all that?*
- Sharp: Yes.
- Wollenberg: The Silverthorne case strictly speaking is not a bankruptcy case. Silverthorne's original San Francisco National Bank was under the National Bank Act, under the controller of the currency's jurisdiction. It's operated and everything else by him, under his jurisdiction.

*See the San Francisco Chronicle, 16 December 1968, and San Francisco Examiner, 13 July 1969.

Wollenberg: All the court has to do is to look over his grievance and what he's undertaking to do in order that he isn't stealing any money himself, I guess. There doesn't seem to be anything else for the court to do. It's his discretion.

It's just sort of whom do you look at--to keep track of what is going on. He has to tell you what he's doing, and send you his agreements, what he intends to do. You look at it, or that he shouldn't do it, that he should do something else.

I started the thing in the first place. Then later I tried the criminal case.

Sharp: I had noticed in one of those newspaper articles that there were like a hundred suits that came out of the bankruptcy.*

Wollenberg: Oh, yes.

Sharp: Is that typical, that things just keep snowballing in that respect after the bankruptcy of a bank?

Wollenberg: In this kind of a thing, I guess it is, because you have not only all those depositors in the bank, all the borrowers, all the lenders, all the transactions involving property, and so forth. These people were really multiplying transactions. They were going high water pants into these questions.

Sharp: I notice that Cecil Poole was the prosecutor in that case.

Wollenberg: Right.

Sharp: In the embezzlement trial, was that a pretty open and shut kind of case?

Wollenberg: It really was concerning Silverthorne. It was reversed once on the basis of publicity, you know.

Sharp: The other bankruptcy case, In re Continental Mortgage Investors involved you sitting as a judge in the First Circuit of the U.S. Court of Appeals in 1978.**

Wollenberg: Yes. That, you know, was the biggest bankruptcy, I guess, in the history of the bankruptcy court.

*See San Francisco Chronicle, 16 December 1968.

**578 F. 2d. 872, 1978.

Sharp: What was interesting about that case?

Wollenberg: Of course, I just had the appellate review of very specific things they spoke about that I sat on. It didn't go into the live interest that you'd have if you were back down on the firing line where it started out.

Sharp: Sure, all the gory details!

Wollenberg: Yes, if you were interested in gory details of this kind of financial bankruptcy stuff [you would have to go back to the trial court case.] We had what--just two or three points, or four or five points--whatever it was--to review. It had been reviewed before on other points, so this case was sort of a cleanup of what was left.

Sharp: Was this a voluntary bankruptcy?

Wollenberg: I don't recall. It was a Chapter XI, and then that had been changed over to a Chapter X.

If you'll notice, all we were ruling on were very technical rules concerning not the merits or not into what happened or anything of that kind. [reads] "The Court of Appeals, Wollenberg...sitting by designation, held that: (1) Since indenture trustee and SEC filed timely appeals from order, timely filing of notice of appeal by bankrupt was a rule of practice rather than a jurisdictional requirement." This simply meant that you could go ahead with it. [continues to read] "(2) [O]rder was appealable as an order which substantially decided a step in the course in the proceedings.... appeals were not rendered moot simply by the filing of the Chapter X petition." Therefore, the "court erred in denying the motions to transfer without first holding hearings on the transfer motion to determine feasibility of the Chapter X reorganization."*

That complicated things again, as I recall, because it told them that they should have had a hearing and they've had all kinds. It was a very unsatisfactory sort of a case at this point, very unsatisfactory.

Sharp: What was the result of all the appeals, then, for Continental Mortgage Investors?

*578 F. 2d. 872, 1978.

- Wollenberg: Well, eventually, I think they wound it up as a Chapter X proceeding, and that's what it became. What the result of it was, I can't tell you, I mean, where the property went, or what was done, or who got this and that. There were thousands and thousands of claimants; and what they got and how much they got, I don't know. We had nothing to do with that.
- Sharp: Do you remember basically what the problem had been with Continental Mortgage Investors?
- Wollenberg: The problem of management and so forth that got them into trouble?
- Sharp: Yes.
- Wollenberg: Basically, it got so big that nobody could control anything anymore. But I don't know who the moving guy was, whether he landed in jail, or landed in Argentina. Somewhere.
- Sharp: I was just interested in it, because in the decision you had said that it was such a big, big reorganization.
- Wollenberg: It was. It was the biggest they ever had in the history of the country.
- See, Citibank is involved here. Some board member branches of Citibank. Consolidated appeals eventually in affirmance by the district court judge. These are the holders of approximately \$36,000,000 in senior note obligations of CMI [Consolidated Mortgage Investors], institutional investors. A Chapter XI official creditor's committee.
- So, you see, it was all beyond us at this time. We didn't have on this court those problems. As I've said, it had been decided and behind us. It was a question of the right to review, whether the appeals were timely and so on. You know, they were.
- Sharp: Just those few narrow--
- Wollenberg: Yes, very narrow questions.

On Charles Wyzanski and the Role of the Trial Judge

- Sharp: I thought we might move on to a different sort of recollection in talking about Judge Wyzanski's xeroxed pages that I sent you. This is from his book, by the way, *Whereas*.^{*} Had you seen this book already. Actually, it's a collection of lectures and different things.
- Wollenberg: Yes. In fact, I have seen it. Yes, sure.
- Sharp: He begins his section on the trial judge by talking about the need for patience.
- Wollenberg: Certainly. You certainly have to have it.
- Sharp: Is that the main element of the judicial character?
- Wollenbeeg: It's a big element. It's one of the essentials and one of the things that is a terrific asset--if you have the patience to go through it all.
- Sharp: He also said that he thought that presiding at trials, especially jury trials, was more important than opinion writing.
- Wollenberg: I think so. That's very important. Records have to be made, and accurately made. There are judges who step in and take over the whole business and do it for the lawyer--examine the witness and everything else. That's just not right.
- Sharp: As opposed--
- Wollenberg: --to letting a lawyer do it. You can see that in just a minute to start asking questions, and he doesn't have any conception of the facts and the background of the witness or anything else. It's a very bad characteristic, but there are judges who do it.
- Sharp: So then would you see yourself more as a kind of umpire?
- Wollenberg: It's an element, but it's not really a kind of umpire as much as it is to have the patience to listen through and not get involved in it. In a trial of a matter, it's perfectly proper for you in some period, perhaps, to clarify something that you don't think has been completely handled and clarified, and undertake such an examination of a few questions.

^{*}Charles E. Wyzanski, Jr., Whereas - A Judge's Premises, Boston: Little, Brown and Company, 1944, pp. 3-25.

Wollenberg: But to jump in and start questioning the witness, where you hang up the background of the case or know the witness or anything else, is unfair to the witness as well as to the case.

Sharp: Judge Wyzanski talked a bit about the use of the special verdict. Do you have special feelings about the use of it?

Wollenberg: I think in certain instances it's very valuable and should be used, depending upon the issues that are involved. But, I wouldn't use it as a general rule. You can use it to simplify issues to the minds of the jurors so that they can understand they're going step by step. Or, if you have separate issues that have to be determined, or could better be determined by separate verdicts or special verdicts.

I think they're very valuable; but they should be used where they're not used, I guess.

Sharp: Wyzanski said that he liked tax and patent cases best. Which do you like best?

Wollenberg: I don't like tax cases. Patent cases are interesting, fascinating. I just haven't anything that I can say I like best. I like it no matter what the issues are if it's in the hands of good, competent lawyers who know their business, know their case, and are trying the case in a good, lawyer-like and direct way. That's the kind of a case I like to try. It doesn't make much difference what the subject matter is.

A case that gets difficult and bothersome is one where you haven't confidence that you're being presented everything that you could be presented, [and feel] that the lawyer is inadequate.

Sharp: Are there some cases where that's more common than in others, where lawyers don't understand or aren't able to work with--?

Wollenberg: No, I wouldn't say it's more common than others. There are a lot of new fields of law that develop from time to time. In the discrimination field, for example, sometimes a lawyer who just hasn't got a proper, objective view of the whole thing isn't presenting it correctly. He gets too involved emotionally or something else, if something happens to him. Or, he's just inadequate; he just isn't as prepared; he doesn't understand how far this law goes and what it is. You do have them occasionally.

Sharp: Wyzanski also talks about antitrust cases, especially about the broad scope given to the trial judge because of the vagueness and shortness of the Sherman and Clayton Acts. He seems to feel that it's very creative in judges deciding how much competition there should be in a certain instance. Are those some of the things that you felt too?

Wollenberg: Yes. I think you have it great if you're prepared. The part that's dangerous to the subject matter, that can cause troubles in the matter, is a failure to appreciate the economics of what you're talking about, or not being prepared sufficiently in economics. You can be carried away with smaller things that all business people do that you may not approve of, or may approve of, or object to having it questioned.

But the judge is pretty much limited. He can do a great deal, as Wyzanski says. But he's also limited a good deal by the decisions, not by the acts, but by the appellate court decisions that come down. He becomes timid because of these decisions. Constructive things that he might be doing or would be interested in doing would be curtailed or chilled, however you want to express it, frequently by the appellate court decisions which are not based, in my opinion, on the realities of the lawsuit. They're sitting off in an ivory tower. They don't know what the heck's happening or why somebody got into a certain field.

Sharp: In the area of antitrust, then, because of the ways the laws have been written, the trial judge has this open area in which to work and perhaps introduce some element of reform into the business world.

Wollenberg: Sure.

Sharp: He, then, or she, as the case may be, might be chilled in doing that because of what would happen at the appellate level? You write an opinion and you know that's not going to wash.

Wollenberg: Yes. They won't even read it. They'll just say, "What's he getting off on a subject like that for?"

Sharp: Have you thought at some point that you would have liked to have gone further?

Wollenberg: No, I can't say that I've ever been really faced with it. The cases I've had are mainly cases in which the conduct of people, and what they're doing is a consummated act, and that's what they're charging about. It's not what you might do in connection with a broad economic consideration.

I don't know that judges are really equipped to do these things that they'd like to do. There's a big danger that many of them would not be equipped to do it now. Wyzanski may be or may not be. I'm not so sure that he should be the one to make the final arbitration, and set the road to reform for business and industry alone as a trial judge. But he is curtailed a great deal. He may feel he can do it, that they're going to grab and take his suggestions, but they're not going to.

Sharp: That sort of leads into the last question that I had, that he talks about on the last page of this section.* He talks about the trial judge as somehow being a spokesman for values, fundamental values. I wondered if that was something that you'd thought about.

Wollenberg: Yes, I do. I feel that's a very, very important thing that a trial judge's particularly situation should bear. I'm sitting on a case right now. Yesterday I spent the day in the court of appeals. It's got just a question of values, involved, the law is clear. And yet, I wouldn't grant the release that has been granted. The other two judges seemed to indicate they were ready to do it. I may dissent on it on the basis that I don't think that this claimant is in a position to getting all the benefits he's going to get out of this judgment.

It's a National Labor Relations Board matter. It's a union squabble, but it's not open and shut. Both sides are unholy in the situation, I think. It's more a matter of ethical conduct than simply a question of legal interpretation.

Sharp: Does that come up often, do you think?

Wollenberg: It can always come up. People act, and get their message through actions. What they say and do gets them into lawsuits. So they're human elements there. You see a little crack through which you think you can get some benefit. Sometimes you're tempted, and that's it.

[end tape 10, side 1; begin tape 11, side 1]

An Additional Note on Antitrust: Simpson v. Union Oil Company

[Interview 5: October 30, 1980]

Sharp: I thought we just might finish up the area of antitrust. Chuck Miller had told me about Simpson v. Union Oil, so I wanted us to talk just a bit about it.** Then we'll get on to the other questions.

*See Wyzanski, Whereas - A Judge's Premises, p. 8.

**Chuck Miller is one of Judge Wollenberg's past law clerks. A phone conversation with Miller produced many clues for interesting cases. For the USSC case, see Simpson v. Union Oil Co. of California, 377 U.S. 13 (1964). This decision reversed and remanded the case back to the district level. It was then heard in Wollenberg's court as, Simpson v. Union Oil Company of California, 270 F. Supp. 754 (1967), and it is the case discussed here.

- Sharp: In the earlier district court case of Simpson v. Union Oil, a summary judgment had been granted. Do you recall the details of it at all?
- Wollenberg: Not in detail, in that I just didn't handle it. It was, I think, Judge Louis Burke. He had held that the consignment method of dealing had been held as not in violation of antitrust regulations back in one of the electric cases, a General Electric case, many years before.* I haven't the case in mind.

Union Oil had followed a consignment system of its products to its dealers, in which they would deliver, say, the gasoline and say, "We consign this to you. We keep the title to it. You can sell it for x per gallon." Burke, following the old General Electric case, had held that this system was legal, it was not in violation. William Douglas, writing for the U.S. Supreme Court, made it very clear that he didn't see any difference and reversed. Then, in the last paragraph of that decision Douglas said something about weighing the other equities. The trial court could do that in trial. It wasn't a matter to be determined by an appellate court at this stage of the proceedings.

What he had in mind is not delineated in any way in that paragraph. So I had a problem of what was he really talking about. Did he mean that since the law had been settled in General Electric, apparently, you could apply it as Judge Louis Burke had applied it, that we should decide when the switchover to the new rule should take place? He apparently did not mean that, because he talked about the damage that was done, and so on, as applying to particularly the Simpson case. I had to determine that. We went ahead and we tried the case.

- Sharp: Were you surprised by Justice Douglas's--?
- Wollenberg: No, it wasn't a question of surprise. I was quite perplexed as to how to interpret that last paragraph, what he was talking about.

I think that actually Douglas was holding that they accomplished the same thing in really the same way. I think it was correct. The rest of the court did too. I don't recall any dissent. Was there one?

- Sharp: Yes, Justice Potter Stewart dissented. In fact, it was a pretty strong dissent, because he said--

*This is probably United States v. General Electric Co., 272 U.S. 476.

Wollenberg: Oh, yes. Sure.

Sharp: --it was pushing too far--at least as I understand it--the power of the Sherman Anti-Trust Act to say that this kind of consignment agreement was really a trust activity.

So then in 1967, the case came to you. What you did was to just set out your findings, and then you dismissed the case?

Wollenberg: Yes.

Sharp: The most interesting parts of it seemed to be points 7 and 10, where you said that Richard Simpson had signed a contract, and that he had been free either to do so or not to do so, and that he later breached the contract.*

Wollenberg: Oh, yes. Well, there were so many other things that were not directly the concern of the original opinion.

Sharp: I wondered how you developed your ideas?

Wollenberg: [pause] Well, you see [pause], the plaintiff, Simpson, had full knowledge. He, in fact, had previously, as I recall it, been an employee of the company who was charged with handling these very consignment agreements with the people in his area, around Santa Maria. He was involved in the very activities with which the company was charged, fully involved.

So he had full knowledge. He entered the agreements knowing just exactly what they were and what they entailed when he moved over to the Fresno area, or wherever it was he had these stations and ran them as a lessee. He couldn't say that he wasn't actually, willingly, and knowingly a part of the whole program and understood it. He invested his money in those stations to operate just exactly as he had previously been operating for the company with other people. That's what I've said in 7, here.

There's no evidence that there had been any refusal to deal with him or grant him anything other than a lease in certain terms, or anything of that kind. There were never any other terms discussed, any evidence that he tried to get a different deal. He went right in and entered into the agreement, knowing full well what it was. I said, therefore, it had the earmarks of a proved consignment agreement in the fullest extent. There was no compulsion or coercion or anything like that on the plaintiff.

*Simpson v. Union Oil Co., 270 F. Supp. 754 (1967), p. 756.

Sharp: So you saw the case totally differently than Justice Douglas?

Wollenberg: That's right. I understood what Douglas said, that it was beyond reason. But in this case, if you apply Douglas's statement as to the equities, may have been just exactly what was happening here; that the trial court should see: What did the plaintiff enter into? What kind of agreement? Was he willing? Were the equities fair and just? And they were here. He had been directly involved in the operation. He was in honest business as a supervisor.

Sharp: So, what was on trial in the case was not consignment agreement?

Wollenberg: No. Douglas settled that. There was one question where, if you were going to weigh equities, should there be notice given somewhere along the line of consignment in view of the General Electric case?

The interesting part of this case in the trial was that we had expert witnesses testify as to the law which we knew. We had the plaintiff put on himself, his lawyer took the stand just as an expert--Joseph Alioto. The defense attorney--what's his name--

Sharp: Moses Lasky?

Wollenberg: Moses Lasky testified on the behalf of the plaintiff [defendant?] as to what the law had been, and that there had been no indication of change in between, and that if you were going to be fair, then notice should have been given. You should have had the opportunity to know that the law has been changing and would be changed. That was another equitable that was given some consideration.

Sharp: Because Union Oil was operating under the precedents of the GE case?

Wollenberg: Yes. As a matter, they believed that the law was clear. They had the right to use the consignment that way. It had not been proven in violation of antitrust principles. That's in 10 as I wrote it.

Sharp: What did you think was the importance of the three hearings of this case? The first one, then the U.S. Supreme Court one, and then your hearing.

Wollenberg: The case was ultimately, after my opinion, as I recall it was settled, closed up.

Wollenberg: Well, the importance was that it was the landmark case that did away with the consignment method as a permissible means of accomplishing what might be considered antitrust, price control.

Sharp: Did that make significant changes in antitrust law, then?

Wollenberg: This was a significant change in antitrust law.

Sharp: Was that challenged again later on, do you think?

Wollenberg: I can't recall, no. I can't recall. Simpson is there. The use of this type of consignment method is in violation of the act.

Sharp: Way back, a couple of interviews ago, when we were talking about your superior court years, you had the Allied Properties case, and that involved price fixing. You ruled that unconstitutional.

We've seen just an enormous problem in the courts with regulation of prices and consignment agreements, and so on. I wondered what sort of conclusions you might have come to about consignment selling.

Wollenberg: I think that Douglas's opinion--there's nothing wrong. I think it's a proper opinion. When consignment selling is used directly for the purpose it was in the Union Oil case, it's clearly without a doubt to get around the antitrust laws.

I often wondered how that paragraph got in there at the end of the opinion. I'd always felt that perhaps it got in there by some member of the court wanting some statement of that kind, or he wouldn't agree with Douglas, and Douglas stuck it in. I don't know that. I haven't heard it from anybody, but that's one way of explaining how things like that get in. It's very unusual for the U.S. Supreme Court to worry about what the result of the opinion is going to be on the law as people have taken it to be over the years.

Although this case did have the weighing of equities in it, there were several things in it that gave you trouble, because, if you'll recall--I don't know whether you looked at the record--but it was brought out in the case the reason the plaintiff Simpson left Union Oil as their supervisor in that area, the Santa Maria area, and left the employ. He had nothing and he had a family, so there was a chance of getting a station that was a good location in the Fresno area. Union Oil, because he was an ex-employee, thought they better offer him something. This was a good deal for him. He went over there.

Wollenberg: The reason he left was he'd had a terrible automobile accident on the highway--as I recall it now. There were some charges against him. I think it was drunk driving and a few things like that. People had been killed. It was in a Union Oil Company car during working hours and so forth.

When they got all through with the case, he was let go. But they had a general superintendent or supervisor over his status down there who felt that if the company could find something for him other than that, they ought to do it. They did find this location over there, and helped him out to get into it and all that.

He went in with his eyes wide open. He knew exactly what he was going into and what the consignment method was and all about it. He knew how much he could make because he supervised all these other stations, many of them, how much they made, so much in the pocket, and the volume he could sell. He wasn't just somebody who came along and took a lease on a gas station. He was very knowledgeable in the whole thing.

So there were equities there that Justice Douglas may have been talking about. These were the equities that, as I remember, Judge [Louis] Burke said something about.

Sharp: What do these cases say about antitrust law, do you think? The problems that people get themselves into?

Wollenberg: They simply say this: no matter what method you use, whether you use a consignment method or some other method, if it's directly being used to fix prices, hold them, control the market, and so on, that it's in violation of antitrust law. Even though, strictly speaking, there are other complications to them, such as consignment.

Sharp: That's all the questions that I had about antitrust and about this case. I wondered if you had any other thoughts on it?

Wollenberg: Well, I think that the big thing in the antitrust field is the growth of these cases to such extremes--they're just mammoth cases. They reach the point where unless you're a tremendously big corporation, you can't very well afford to litigate antitrust under the average situation.

That's one of the big problems with antitrust cases--what it has done to the courts and the court calendars and the court's availability for other things. Take the IBM cases that we've gone through in this court, that we've had some knowledge of.

Wollenberg: They are tremendous; it's practically a year of trial. The discovery and the abuses of the discovery process; use by defendants of just wearing people out by the process. It's a tremendous problem. It's not solved by any means. [pause]

The Issue of Prisoners' Rights

Sharp: I think we'll just go on to the next set of cases--the prisoners' rights cases. I talked to Chuck Miller about some of these and he was very helpful.*

Wollenberg: Yes. I appointed him after he left, and he was very successful. I noticed he gave you his great case, Wright. He had everybody in the prison writing and trying to get him to represent them after the Wright. He didn't take any.

Sharp: There are four now. The two Gilmore v. Lynch cases. Wright v. Craven, which is not strictly a prisoners' rights case; and Martinez v. Procunier.** First of all, just how did the area of prisoners' rights come about? What happened?

Wollenberg: Well, why did the prisoners wake up is the start. I guess you always had some prisoner complaints cases. Then it became possible to use the sections; they found they could come into court on some of the civil rights sections of the law--it begins like 1983, 1981, '83. They used to use those, and the discrimination section if they had racial problems. They began to use them in connection with the prisons.

Plus, the fact that there was certain public consciousness of this, too, coming from prisoner organizations. The public became interested--some segments of the public--in prison conditions.

Sharp: Did you have a lot of contact with the prisoners, with these rights organizations as a judge?

Wollenberg: No, I didn't have direct contacts with them, other than through the lawsuit--the usual conduct of the lawsuit.

*See note on p. 282.

**Gilmore v. Lynch, 310 F. Supp. 105 (1970); Gilmore v. Lynch, 330 F. Supp. 326 (1971); Wright v. Craven, 325 F. Supp. 1253 (1971); and Martinez v. Procunier, 354 F. Supp. 1092.

- Sharp: In Wright v. Craven, the issue was an error that was made in the trial, that the court hadn't informed Roland Wright that he would be tried as a recidivist.
- Wollenberg: That's right.
- Sharp: Trial errors of this sort--are they common?
- Wollenberg: They can be common; they happen now and then. They are overlooked when you're rushing through cases sometimes. Judges even forget to stay with the sometimes very important things.
- It was simple enough to tell Mr. Wright that the plea as to his prior convictions would affect his sentence under the law of California, that it would be increased by so much in accordance with the points that were set by the statute. He was not so informed, so he did not make a knowing plea. He wasn't fully advised of the facts; he said, "Fine."
- Sharp: Are there other errors that are more common than this one?
- Wollenberg: Well, you have maybe neglecting to tell a prisoner what the sentence will be on a plea of guilty. Or, neglecting to tell him what his rights are if he goes to trial as distinct from the plea of guilty. There are many things of that kind.
- There's Rule 11, if you're interested in looking at it. That very clearly tells you what you have to tell the prisoner in many cases.
- Sharp: The 1970 Gilmore v. Lynch case, this was a three-judge district court case with you and Judge Benjamin Duniway and Judge Alfonzo Zirpoli.* It seems a pretty strong statement regarding prisoners' rights--
- Wollenberg: It is.
- Sharp: --especially the access to the court, both in terms of assistance in filing habeas corpus release requests, and the use of necessary books in the prison library. Prisons had to begin to respond to the inmates' legal needs. I wondered how you developed your ideas on this case?
- Wollenberg: You must think of what the effect of the regulations will be upon the institution and upon the prisoners. [looking through papers] You just handed it to me--

*Gilmore v. Lynch, 319 F. Supp. 105 (1970).

Sharp: Do you want me to turn the recorder off for a minute?

Wollenberg: No, there it is. I've got it. They'd all gone a step or two in this direction; and then we finally had this case which by its very nature wasn't able to encompass the whole deal, the whole plum. We used it accordingly for this purpose: the use of books in the library is important to a prisoner. A prisoner has the right to communicate with his court or with his lawyer and so forth. He cannot be deprived of those rights. If he wants to be knowledgeable and know what he's talking about, he's got to have some books and some opportunity to study, and do it the best way he's inclined to do.

We were particular that he must have representation. And, if he doesn't have a lawyer, doesn't want a lawyer, wants to do his own work, he can find out first what he should be thinking about. He needs books to do it.

We tried to find, in this case, and set forth with some particularity what adequate books should be available. Instead of the sketchy thing he had, he wanted to build great libraries at tremendous expense. But we tried to make available for use, and under proper regulations--not just available for two minutes a day. Time could be found for the use of it, which is all part of the package.

Sharp: Did this case give you more insight to the prisoners' situation with respect to the courts?

Wollenberg: Well, yes, of course it did, because we had to deal with it directly until we came to the purpose of determining the case. We had to go into the details, what was going on.

Sharp: What sort of thoughts did you exchange with the other judges in the case? Do you remember any of that?

Wollenberg: No, the three of us were very much in accord. We didn't have any serious disagreements or disputes. No, I was very much in accord with the other judges in that. We had little things, but they were minor, and they would be very easily settled. You know, somebody may have thought you need more than the codes, you need something else--

Sharp: To make it stronger?

Wollenberg: I'd give it to them.

- Sharp: In the other Gilmore v. Lynch case, it's sort of a strange case because they're talking about so many different things.* There are many petitioners, and they alleged many grievances--
- Wollenberg: And damages. They were all looking for money for the compensation of damages. We took that out of this case, the damage end and the compensation, and just dealt with what relief could be given in an equitable and right way. The first case that you quote was rejected.
- This--it was decided that one judge could hear. It wasn't necessarily these issues. There were not three judges.
- Yes, it's typical to a large extent. Whenever they are aggrieved, they want \$1,000,000 or something like that.
- [end tape 11, side 1; begin tape 11, side 2]
- Sharp: Of the more general type of prisoners' rights case--was the second Gilmore v. Lynch case more common?
- Wollenberg: Well, it was statewide. Your talking about problems throughout the California prison system. It was the same in all the prisons, yes. They are under one set of regulations. If there were separate regulations for separate institutions in some fields, they were pretty much the same. It was the same set of rules.
- Sharp: The question of access to the courts--was that a pretty major theme of many of the prisoners' rights cases?
- Wollenberg: Yes, they had to be based on really, did they have access to the court? They're entitled to have access. That's the issue.
- Sharp: One of the issues that was raised in the second Gilmore v. Lynch case was just the grievances about other kinds of conditions. There seemed to be some fear expressed that the inmates would be--if I understood it right--that they may be hassled or have some problems because of raising the case, raising the issues in the case.
- Wollenberg: Yes, that's in every one of them. They say, "Well, now, we've raised this issue. It'll be trouble." Whether that be true or not, I don't know. It would be questionable whether they were really proven as such. It's always alleged.

*Gilmore v. Lynch, 330 F. Supp. 326 (1971).

Sharp: In the other case, Martinez v. Procunier, that was a class action suit, where the state prisoners challenged certain specific Department of Corrections rules--rules regarding the receipt or sending of certain kinds of mail, and about investigative interviews conducted by law students.

Why was this a three-judge case? That was just one of my first basic questions.

Wollenberg: Well, let's see. It was a constitutional law question. Item 3 in the headnote says something about it. [reads] "California Department of Corrections prohibiting inmates from sending or receiving letters which pertain to criminal activity or which contain...defamatory, or foreign matter, or which are otherwise inappropriate, were violative of the First Amendment rights of prisoners...."* The prisoners said they had a right to write whatever they wanted. This all goes to whether they've got security in the prison or not; censorship can only be based really on security of the institution.

Sharp: It seems like in this case you had a pretty basic disagreement with the Department of Corrections about mail.

Wollenberg: Yes. They wanted to maintain their position and hang tight. We tried to delineate what they could and couldn't do.

Sharp: But they tend to see mail as a privilege, as opposed to a right?

Wollenberg: That's right, yes.

Sharp: I wondered how you developed your thoughts about that. Did that sort of come to you in the case, or was that sort of a long--?

Wollenberg: I think so. I don't think we had a real problem here with what the thing had been.

Sharp: Was this a case where you heard from ACLU, American Civil Liberties Union, members or specific groups regarding prisoners' receipt of mail or any of that?

Wollenberg: I don't recall any. The plaintiffs were represented by the Mexican American Legal Defense and Educational Fund, and Hastings College of Law students were here.

Sharp: I wondered how all of these cases affected your ideas about the prison system in California?

*Martinez v. Procunier, 354 F. Supp., p. 1092.

Wollenberg: The California system, compared to what I know now, and in thinking about it, probably has always been better than the average system around the United States. I don't necessarily say that it's an ideal, or what any ideal is. But the system was working. They did work with you when you finally brought them in and gave them to understand that we were pretty serious about going into these things. They worked with us.

The attorney general would come over, usually, and announce that he saw our position, and we were right; his clients wouldn't do anything. We'd tell him, "Before you were elected, you were a lawyer. You go back and tell your client what they have to do. You're the attorney general of the state of California. You're the legal officer of the state of California. If that's the way you feel, go tell them so. Give them to understand they have to work with us on this." So they started to pretty well.

Raymond Procunier was always reasonable. We really had no problems with him as an individual. Some of his people were tough and hard to handle.

Sharp: Did these cases suggest any changes in the prison system to you?

Wollenberg: The system as such?

Sharp: Yes.

Wollenberg: Not necessarily. It's just a matter of administration--you know, rights of prisoners, and what you're going to consider a reasonable thing, and that the prisons can be operated and stay secure. Security is the main thing. They have to show that any regulations are justified in order to maintain security of the institution. .

They say you can't get obscene mail, for example. Well, if it's just obscene mail--but what is obscene? You're opening up a whole lot of things here. If obscenity is to be judged on the basis that if a lot of obscene matter that is inflammatory, and it results in putting the security of the institution in jeopardy, that's another question. There's no question of that to argue.

The Conscientious Objector Cases

Sharp: I thought we'd move on to the conscientious objector cases. I found them particularly interesting.

Wollenberg: Oh, yes. That was a fascinating subject if you were in that period. We heard a lot of very interesting matters and cases going on along with that.

Sharp: I took these cases to talk about instead of the draft evasion ones. These are the cases of men who were already in the service and were now trying to get out. I thought--just in terms of time--we would talk about one of the three, and then try to draw some ideas out about the general issue of them.

In Shirer v. Hackel, you denied the idea that the lateness of the application for CO status should make a person unable to get the status. Just because it was late, that's not a good enough reason to deny it--that was the reason that the army was using.*

Wollenberg: Yes, that he waited too long.

Sharp: You criticized the army for ignoring all the other evidence that Melvin Shirer presented, just because the application was late. I wondered how you thought about men applying for CO status?

Wollenberg: Well, if they were true, and could show, they had a right to attempt to show that they were real conscientious objectors. They were entitled to consideration. We felt that Shirer did have things that should be given consideration, and not rely just on the arbitrary statement that he should have done it a year or two earlier. In that year, he served in the army and didn't raise any issue. Suddenly, he became conscious of this.

Sharp: So you continued to look at all the other cases on the basis of the evidence, and what was really going on?

Wollenberg: That's right. I have.

Sharp: What was important in this case was his persuasive evidence once it was presented. Is that right?

Wollenberg: Yes. And here, as I've said, that the army only had one thing. They said, "He's giving us all this too late. He doesn't mean it. It's not sincere. If he was sincere, he would have started earlier." I don't think that alone refutes the lack of sincerity.

Sharp: I wonder if you had a sense of the climate of opinion about conscientious objectors.

*Shirer v. Hackel, 330 F. Supp. 369 (1970) is the case discussed here. See also Milton v. Commanding General, 316 F. Supp. 405 (1970); and, In Re Kanewske, 260 F. Supp. 521 (1966).

Wollenberg: Well, I suppose you always have to have some cognition that must have some effect upon you. A case of this kind has to be taken up as an individual case. It's a question of whether Shirer has a sincere belief. He set forth his entire life history, his interest in church, as I mention here, his volunteer work with animal shelters, something of that kind, stray animals that he cared for. He may have released the right statements, and the army was unable to refute that he didn't mean it, taking only the one issue, the one point.

Sharp: A couple of months ago, we talked about Judge Frank Johnson. You and I had both watched that program that Bill Moyers had done.* Judge Johnson talked a little bit about the climate of opinion. He was talking about regarding civil rights, integration, and so on. I wondered in the course of your trying the draft evasion cases, and then this set, the CO cases, if you were aware of pressures in the society for you to go one way or the other on the cases?

Wollenberg: No. Certainly we were aware of the fact that there was an element in the community that felt that somebody should be prosecuted right up to the hilt, and that you should stay with the findings of the military, or something of that kind. I don't think that because some people like that do exist, that you feel a necessary pressure from them.

I find, in my experience as a judge, that the American people are very fair and very reasonable. As a whole, they do not necessarily follow extreme statements that simply. They do not put undue pressure on the court. I have never felt undue pressure of any sort. I hope not to get into external pressures.

Sharp: The reason I ask that is just because war is not something that people tend to feel wishy-washy about. It's just like integration or racism. It's something that people tend to feel very strongly about. I was trying to compare your position with Judge Johnson's, because you had told me that he had experienced just a lot of pressure.

Wollenberg: Of course, he lived right in the hotbed of it. It was the nature of the people in that area at that period. Racism was there; it was taken for granted as everyday life. Children were born into it and raised right through it. Even if there's a revival going on, it's a thing that they have to put up with throughout their entire lives, so long as they stay in the area. It's just that way.

*Bill Moyers taped two interviews with Judge Frank Johnson for his Bill Moyers Journal. They both were entitled, "Judge: The Law and Frank Johnson," and aired on PBS, in 1980.

Wollenberg: San Francisco is not that kind of a community. You could go across the street and find almost any issue--the other side of it right there.

Sharp: That's true. Does that make it easier to be a judge here?

Wollenberg: I think so. All the judges who come here just marvel at the city, what it is, as compared to all the rest. A newspaper in San Francisco will take on a position at some time or other on the draft cases. It wouldn't last long. They'd write a couple of stories, and then they'd be your best friend in the world right after that. It didn't get anybody excited.

They have trouble getting people upset in San Francisco. Other cities, a headline in a newspaper can turn the whole town out for something. I don't think that's possible in San Francisco. I don't think there's anybody in a newspaper with that power here, or a radio station, or anything else in this area. Eventually, by pounding away at some constant thesis they can perhaps get people thinking along a certain line. But, I don't think they can stampede a judge into hasty, untoward action.

Sharp: In the sixties, the Northern District Court had a reputation for being sympathetic [in draft cases].

Wollenberg: Sure. People were coming from all over the country out here to San Francisco to register for the draft here so that could have a San Francisco number.

Sharp: How did that make you feel?

Wollenberg: Well, you didn't like it. That's right. Yet the law was such, they were entitled to do it under the law. You couldn't send them home. They were here properly. Some of them were not here properly, and you found that.

Sharp: Did that make you dwell on the draft evasion or the CO cases a little more than you might have?

Wollenberg: I don't think you dwelled on them any more. I mean, I don't think you treated them any differently than you treated any other cases, any group of cases. You looked into them very thoroughly, and considered them very thoroughly.

See, at the same time we were dealing with the draft setup, we had General Lewis Hershey, and so on. He would do some of the silliest damn little things I've ever saw. Now and then it was easy. All you had to do was issue an order about him. You had him, if you were careful.

Sharp: What sort of thing comes to mind?

Wollenberg: Well--what was it? There was one particularly in mind--I don't know just exactly what it was that he did. He would make statements that were out of line. It was never easy to show that they were out of line with his office and some of his people. Some of them were very good, too. He had some excellent officers who were going to do a good job, a fair job. But every now and then he wanted to get up on top of things, and he'd make statements that were just simply not so.

Sharp: The armed services in the 1970s had increasing problems with desertions and use of drugs among combatants, especially anti-war GI's, and people who went AWOL. I wondered if you heard a lot about the army's problems when these CO cases came up, or if you heard about them very much at all?

Wollenberg: No, other than what the general public heard about. Nothing officially.

Sharp: I just wondered how you might have related to the army's problems, perhaps thought, "More and more army problems, maybe I'd better be sympathetic to the army."

Wollenberg: Well, if they had drug problems, they were drug violations or something, I was involved with them.

Sharp: I wondered if the draft evasion cases and the CO cases affected your ideas about the Vietnam war at all?

Wollenberg: Well, they were all part of the terrible mess we were in. I don't think you'd say they affected your ideas about the Vietnam war, if you mean by that the political significance of it, except insofar as what they were doing to the people, and the individuals.

Sharp: I wondered if you'd maybe come to some conclusion at the time.

Wollenberg: Judge William Sweigert declared the Vietnam war unconstitutional.

Sharp: How did you react to that?

Wollenberg: I don't think I would have done that.

Sharp: It wasn't an actionable wrong?

Wollenberg: It may have been an actionable wrong, I don't know. But the point is, I don't think it was a matter, after the years we'd been fighting it as a war, that we could turn the clock back and scratch out two or three years of vicious fighting and warlike conduct. [pause]

Archie Brown and the Landrum-Griffin Act

Sharp: I thought we might go back a little bit in time to a totally different case. It's the Archie Brown case, in 1962.*

This is a pretty interesting case because of the issue-- Communism.

Wollenberg: Sure. Very interesting.

Sharp: Communist party membership, and union leadership, and Congress trying to control that fact. I wondered first what you thought of the law, the Landrum-Griffin Act.**

Wollenberg: I think it was a constitutional act, that Congress had the right at that time to regulate the union conduct of the officers.

Sharp: This period, 1959 and the early sixties, was a period of supposed reaction to the McCarthy era, and you wouldn't have thought, maybe, that this kind of act could be passed, because it was a more liberal era.

I wonder if you knew much about the passage of the act.

Wollenberg: Landrum-Griffin--no, I don't know much of the history concerning this section. But it was passed as a sort of a bill of rights thing, sort of for the protection of the union and the union membership--the members of the unions against the unions, as well as the employer-employee relationship. It was on that basis that legislation of this kind was passed.

There were some large unions that were suspected and it was probably shown who were Communist-dominated. Legislation of this kind, the Congress felt could reach that problem. It did settle for this act.

It's interesting. The case was ultimately reversed in the U.S. Supreme Court on the issue of ex post facto. The issue of ex post facto was never discussed in the Supreme Court other than in the last few minutes. The Supreme Court had to get something new and different to call it unconstitutional.

*For additional information on this case, see the San Francisco Chronicle for 6 April, pp. 1, 16, and for 5 May, pp. 1, 16, both in 1962.

**The Landrum-Griffin Act was Section 504 of the Labor-Management Reporting and Disclosure Act, passed in 1959.

Sharp: I was going to ask you. I actually did find the U.S. Supreme Court, and the Ninth Circuit decisions later on.

I wondered why you limited the jury to consideration of only the question of Archie Brown's membership in the Communist party?

Wollenberg: Well, because there was no question he was admittedly the secretary of the union. Although not stipulated, it was shown at every stage and never denied. I think that was the only other factual issue they had to determine. I think I told them he was the secretary of the union. All the records, and so forth, indicated it.

Sharp: Was that a directed verdict in a practical sense?

Wollenberg: No, because the jury still had to find that he was a member of the party and that he took part in the party. He was involved in some sort of executive board.

That was the most interesting and fascinating part. The government had an undercover agent, a woman. She just looked like lovely old Mrs. O'Toole who had her grandchildren all around her. Just a sweet old lady--middle-aged. You know, on the other side, but on the way to being an old lady, not decrepitly old.

For twelve years she had worked for the FBI. During those twelve years, every week, twice a week, she wrote a complete report and sent it in in her handwriting to the FBI. She was ultimately elected a member of the executive board, and attended. I forget her name.

The defendants, and their attorneys, Gladstein and the others sitting there with Archie Brown, had no concept that she was going to be called, apparently. When Cecil Poole, who was prosecuting the case, called his next witness and mentioned her name, they said, "What did you say?"

He repeated the name and said, "Mr. Marshall, bring her in." The old lady came walking in the door and down the aisle. You could have seen half of that court fallen over on their face. They then brought her up to the dais. After that moment, she was no use to them anymore.

[end tape 11, side 2; begin tape 12, side 1]

Wollenberg: I was supposed to read them all over in camera, and decide which ones were appropos or relevant to this particular lawsuit, and allow the defendants to take a look at them to decide what. Well, we recessed for a couple of days, and I put in a full weekend,

Wollenberg: and rushed through these papers to find something that had to do with this case--it was a big job. I had to do it all myself. I had to do it all in camera.

Sharp: How did she then affect the outcome of the case?

Wollenberg: Well, only that she testified as to Brown's presence at all of these meetings, and what he'd done and so forth. The jury had that to decide, if he was a member of the party. Later, he took the stand and said he was.

Sharp: The whole case is interesting just because it's Archie Brown. But, the U.S. Supreme Court and the Ninth Circuit took totally different attitudes toward the case. I had a couple of questions just about that. I don't know if you recall the appeals and what happened.

Wollenberg: I only recall that the Ninth Circuit raised a constitutional issue, but not the ex post facto. All the ex post facto said was that they passed the law after he was already involved in all these things. I don't know whether that's true or not in this case. I never could understand whether it was truly ex post facto or wasn't ex post facto.

Sharp: What I saw of this case at the U.S. Supreme Court level was that this Section 504 was a bill of attainder.*

Wollenberg: Yes. That's right.

Sharp: The decision said Congress had exceeded its commerce clause power, that it was an unconstitutional law. Judge Charles Merrill of the Ninth Circuit also said that the act was unconstitutional. It was too broad and it did not threaten commerce, and so on; it had no necessary component of crime involved in it. One of the basic things was that it was a restraint upon the freedom of association as guaranteed to Archie Brown through the First Amendment.**

Judge Frederick Hamley of the Ninth Circuit had problems with what he thought was a directed verdict.

Wollenberg: Right. He said it amounted to a directed verdict, that I took away those issues from the jury.

*381 U.S. 437.

**334 F. Supp. 488 (1964).

- Sharp: Especially the issue about whether or not this board was really an executive board--that was one of the things that he mentioned. I was just puzzled by how the three courts could see the whole thing so differently.
- Wollenberg: It was a mess. It was a big mess. Like these cases always are. They're never clear to you.
- Sharp: Cases involving the Communist party?
- Wollenberg: Yes. You know, if you start looking at the Smith Act cases, it's the same thing. Although this is different from the Smith Act on a constitutional basis. That's what I found, and I guess what really the court of appeals found too.
- Sharp: I wanted to ask you about the sentence that you gave Archie Brown of six months. You could have sentenced him a year, and given a \$10,000 fine. I wondered why you gave him the lesser sentence?
- Wollenberg: Well, I didn't think that he, over that period, had done--the nature of the crime and so forth. I thought that what the government really was primarily interested in was the conviction to show that we certainly do want the conviction to punish, that's all.
- Sharp: Is this a good case to talk about your sentencing philosophy?
- Wollenberg: I doubt it, because it's not a straight criminal case in the sense that Archie Brown held somebody up or clobbered him over the head and stole money. It's a little different, because this is based on his political beliefs.
- Sharp: I'll get another case and we'll talk about it.

But, you did agree with Congress that this was a good act?

- Wollenberg: Not an unconstitutional one. Was I reversed in the court of appeals, or reversed in the Supreme Court? I guess in the court of appeals. It was on a government appeal.

The Dovie Carl Mathis Case and the Death Penalty Issue

- Sharp: The next case is about Dovie Carl Mathis and his reprieve in 1966.* Again, in this case I'm most interested in the climate of opinion around the case, and the issue of the death penalty in California. This case had come to you after both the California Supreme Court and the U.S. Supreme Court had decided against new hearings for him. I wondered why you weren't persuaded by their decisions?
- Wollenberg: All I did, didn't it, is to stay the proceedings pending a hearing. I thought he was entitled to a hearing at that time. He was granted a hearing; I think he ultimately went to the death chamber, didn't he?
- Sharp: I tried to find that out and I couldn't.
- Wollenberg: I didn't relieve him from that obligation. I simply put it off for the time to give him a hearing. I think I went right ahead with the hearing. I don't think we waited very long.
- Sharp: Had you discussed this with Governor Pat Brown, to get his input on it?
- Wollenberg: No, I never did discuss it with him.
- Sharp: Or with his clemency secretary?
- Wollenberg: It was Cecil Poole. No, I didn't discuss it with the governor or his office. We were questioned as to whether we would restrain, that's what they were after.
- Sharp: Did you have any feelings about reviewing other death row cases? There were some sixty-four or sixty-five of them.
- Wollenberg: Oh, yes, we had a lot. Not particularly, we did it right along at that time. The only feeling you have is that lots of times the attorneys would wait to try to get the governor to act. If they were to be executed at ten o'clock in the morning, they'd come tearing into court at ten minutes to ten with an order wanting a stay of it. Sometimes you had to grant the stay if they could make a show that they had something. Or, if they didn't, you refused.

*For more information on this case, see San Francisco Chronicle for December 14, 1966, pp. 1, 12.

Wollenberg: But, they would want to do it ten minutes before the pellet was to be dropped up there. The prison used to cooperate very well with us. The warden would make a telephone call and keep a phone line open. They would not drop the pellet. They'd stop the clock and wait until the judge told them, "I'm through with the hearing and I have nothing else to tell you. Go ahead."

Sharp: Why do they wait until the last minute?

Wollenberg: These lawyers would do it that way, that's all. They'd think they could panic you into it or something, I guess. They'd tried it before with other people and failed.

Sharp: Did you have any feelings yourself about the death penalty?

Wollenberg: No, I didn't have any. I never have taken a stand against the death penalty. I voted in the legislature on the issue. I voted against repeal of the death penalty.

Sharp: Did you have any sense of the feelings of other district judges regarding the death penalty?

Wollenberg: A feeling of how they feel? Judge Zirpoli is very outspoken. He's against the death penalty. I don't know that I know the opinions of any others.

A Note on Mandatory Pretrial: An Example of Important Changes in Northern District Court Procedures

Sharp: I wanted to sort of switch gears and talk about some other recollections that do not involve substantive law questions at all. The first area is the mandatory pretrial rules that were approved in 1962. I think I sent you a short article from Brief Case on that.* The article said Chief Judge George Harris had approved the rules after all the district judges had voted unanimously to accept them. I wanted you to just tell me how all that came about, if you remember.

Wollenberg: How do you mean?

Sharp: Whose idea was it that these rules regarding mandatory pretrial should come into effect?

*See Brief Case for July 1962, pp. 10, 61, "Revolutionary Changes in Federal District Court," by James Murray.

- Wollenberg: Well, I guess we had the master calendar system at this time, July '62. Federal courts generally were pioneers in pretrial around the country. We felt then that the way to do it was to let there be no question about it, and let all the lawyers expect to pretry every case. We would make it a condition to putting on the trial calendar that there be a pretrial. It would be set down as a rule of the court and everyone would have notice of it. The date for the trial would be set in advance, just like a trial date is, so they'd be prepared and ready. A pretrial order would come out of that hearing, that proceeding.
- Sharp: The district judges, you and your colleagues, voted unanimously to accept the new rules regarding pretrial. Everybody just thought this was the best idea?
- Wollenberg: Sure. Everybody thought that it was a necessary thing, and it is a necessary thing that cases be pretried. It takes time and effort and everything else.
- Sharp: The article said that you and Judge Zirpoli had to prepare the new rules. I didn't know what that meant.
- Wollenberg: I don't know either. It seemed to me that actually the dictation and the drafting was mostly Judge Sweigert---but that's just recollection.
- Sharp: What was the impact of this new, mandatory pretrial?
- Wollenberg: I thought it had a good impact. I think cases were pretried that hadn't been before, with a salutary effect on the trial.
- Sharp: You had been heavily involved in pretrial when you were a superior court judge, and you mentioned then there was some resistance on the part of some lawyers, at least initially, to the use of pretrial. Did you have the same sort of resistance in 1962 when the mandatory pretrial was going into effect?
- Wollenberg: No, I don't think so. As I recall, no, there was not. I don't think that the federal litigants, attorneys that were over here so much had any great resistance.

Federal Probation and Prisons

Sharp: I thought we might talk a bit about the Committee on the Administration of Probation of the Judicial Conference of the United States.* I don't know if I have these dates right or not, but I have down that you were chairman of this committee from 1973 to 1978.

Wollenberg: That's about right.

Sharp: Tell me a bit about your duties as chairman of the committee.

Wollenberg: Well, it was a regular committee of the Judicial Conference of the United States. We primarily had to be in contact with and collaborating with the Probation Division of the Administrative Office of the Courts, and preparing and approving moving regulations. We supervised the preparation of a probation report. We put out a document of what it should be like, what it should contain, the order of presentation and so forth. Matters of that kind, of administration in the Probation Division. At that time there were 450 or so probation officers throughout the United States. When I left in 1978 we had over 1,600.

Sharp: That's an enormous growth!

Wollenberg: I went to Congress every year to ask them for more positions, and we got them. We were then able to get better supervision, and caseloads were changed a good deal, and it made a big difference.

Sharp: What were the basic objectives of this particular committee?

Wollenberg: Well, the Judicial Conference of the United States does its work through committees. The committees are not limited in membership to just the members of the Judicial Conference. It's judges, generally, appointed by the chief justice.

The Probation Committee was created in about 1963, I think. I was on the first committee; and before that, I'd been on an ad hoc committee that Chief Justice Warren had appointed to determine whether there should be a probation committee of some kind. Then when we went ahead with the Probation Committee itself, I served on that as well.

*This is just generally referred to as the Probation Committee.

Wollenberg: Our duties were to watch and to advise probation, to represent the courts, to see that the judges got information on sentencing and what data was available. We developed data for the use of judges in sentencing, and so on.

Sharp: Did you then suggest changes in the probation of federal prisoners?

Wollenberg: Yes. We would make suggestions to the Judicial Conference as to whether an amendment should be made to the law, and so forth. Many were. Many changes were effected, such as deferred sentencing, and acts concerning generally investigation of those accused of crime, and the reporting thereof to the courts. We worked on all of that.

Sharp: From the time you came on to the committee when it was established in the early sixties to when you left in 1978, how do you think federal probation changed as a program?

Wollenberg: I think that judges became more understanding of the work and duties and obligations of probation officers. I think the probation officers also felt they could make recommendations and statements to judges that maybe previously they were fearful that they would be misunderstood.

We tried to develop, and did, I think, to a large extent, were able to develop a better professional feeling in the Probation Department among the officers themselves. I think we raised the standards of people who were being appointed by judges, because the law provides that the judge works out the blueprint, and may appoint probation officers. We set standards that wouldn't authorize them to get on the payroll unless they met these certain standards.

We had a survey that we made after a few years of the Probation Division after these standards were in, and--I don't know--everyone practically had a degree and was worthwhile. Many, many had advanced degrees, and many of them were still working on advanced degrees. We encouraged that--staying with education.

Sharp: All part of the professionalization--

Wollenberg: Yes, of the department.

Sharp: Since you were from San Francisco, did you have special ideas for changes in San Francisco's probation of federal prisoners?

Wollenberg: No, we had a fairly good office here which had a lot to do with it. We had a probation officer who worked very close with the University [of California at Berkeley] departments over there on

- Wollenberg: Criminology and in Social Welfare generally, and so on. Albert Wahl. He's still around, but he lives up in Dutch Flat. He may be coming down next month. Anyway, he did a lot to encourage. He worked very closely with me; he worked very closely with the Administrative Office in any event.
- Sharp: Did you come to any conclusions or ideas about probation in general from your experience with the committee and suggesting changes?
- Wollenberg: Well, yes. I always had felt that probation is a valuable tool that the judge has. It can be used even now innovatively. You can make conditions of probation at the time to get the information, the data, and the history, and understand. They're able to get the information so that you can understand the effects of certain provisions, what they do to individuals, what the results are.
- Sharp: Chuck Miller told me that you were also on the U.S. Attorney General's Panel on Corrections. Or is that not right?
- Wollenberg: Yes, the title is not exactly right.
- Sharp: Oh, what's the real title?
- Wollenberg: It's meeting next month. It's the Advisory Corrections Council. It's a statutory council and it's provided for by Congress. There are three judges on it, appointed by the chief justice. The attorney general or his designee is the chairman. The chairman now is Harold Tyler, former deputy attorney general under the Republican administration. He was appointed by Griffin Bell and has continued on. Then it has as members the director of the U.S. Bureau of Prisons, Norman Carlson; the chairman of the U.S. Parole Commission; and, the chief of the Probation [Division] Administrative Office of the Courts.
- Sharp: What's the purpose of this group?
- Wollenberg: Well, Congress in the act said that we were to study and report from time to time to the Congress, to the president, to the courts, on crime and corrections in the United States. It's pretty broad and general thing.

Here are the minutes of the last meeting--correctional standards we've been talking about, and there's standards for institutions. We talk about prisoners' rights and things of that kind. Just exactly what this area is all about--mail, telephone privileges, all of this is going on.

Sharp: So the area of prisoners' rights has filtered all the way up to this kind of statutory council's concern.

Wollenberg: Yes.

Sharp: How are the recommendations that you come up with at the council implemented into a law?

Wollenberg: It's up to Congress to do something about it. We might make a suggestion that some congressman might pick up on from our report or something of that kind. Or, the attorney general arrows it over.

Sharp: Are you supposed to make reports to certain Senate committees or House committees?

Wollenberg: Yes, the Committee on Administration of Justice. The Senate Committee on Courts--I guess it's the house committee.*

Sharp: What sorts of recommendations have you made in this council?

Wollenberg: Not a great deal. We've mostly been reviewing the things that the departments are doing themselves. They're straightening out a lot of things and we're making recommendations there. They're following up very well.

Sharp: How new is this council?

Wollenberg: Well, it's really very old, and then it became completely inactive. For a long, long period they had a breakup and disagreement in it, and as a result nobody did anything. It was reactivated in about '78. A whole new group of appointees went on. I hadn't been on it before.

Sharp: Have the goals of it changed since before?

Wollenberg: No, the act is the same act.
[end tape 12, side 1; begin tape 12, side 2]

Sharp: Tell me more about your review process.

Wollenberg: For example, I worked on the first paragraph of this policy statement: "Toward a Federal Correction Policy in the United States" [reads] "Despite the considerable rise in prison populations in the United States, particularly beginning in 1975,

*The editor was unable to verify which it was.

Wollenberg: it is apparent that this nation continues to have dangerous confusion between opposing ideologies concerning proper correctional policies, particularly in respect to confinement of offenders. Although in the last nine years we have experienced the serious tragedy of Attica, and now most recently in Santa Fe, it is likely that absent a serious national policy in program for corrections, the United States will continue to be driven between the policy extremes of no prisons at all and large expenditures which are unnecessary for correctional programs." So we're trying to rationalize what sort of things should be done.

Sharp: Do you think that's true?

Wollenberg: There is a big, strong movement in the United States to try to do away with incarceration, prisons. They oppose any money, anything at any time to do anything to the old prisons, or to build new institutions or anything of that kind.

California, I think right now is particularly suffering for it. We have no new institutions. We've got these big, great, cumbersome places which should be broken up and we should have small institutions around the state. They're opposed; they don't want to build any institutions. As a result, we've got these big institutions that could blow up like an Attica at any time. And cumbersome to operate.

Sharp: Do you have some sort of ideal system in mind?

Wollenberg: Well, the federal system has been building these smaller institutions. Are you familiar with Pleasanton at all?

Sharp: No.

Wollenberg: Well, visit it some time. It's an interesting place. It has about 300, 200 to 300 prisoners. It's small. It's the ideal, to build many of them, so that you can keep people near their homes and population centers where they can be visited and keep their family ties. They're small institutions, not these great big things like San Quentin. It's all so solitary. But California doesn't do it; they're not permitted to do it.

Sharp: When you're at this national level of this Advisory Corrections Council, do you have a sense of how people feel across the nation about this problem?

Wollenberg: Well, we've brought a lot of people in to talk to us. There are people in several well-operated, privately endowed places, who are interested in prisons, who do a sensible job of constantly

Wollenberg: working on things in institutions and standards and so on. We hear from them. We hear from the attorneys general of the different states who express their viewpoint. They're frightened to death of any federal regulation; they don't want the federal viewpoint. They say they're nothing but trouble.

Sharp: So they appeal to you not to--

Wollenberg: Not to. If we are going to do anything [they say], "Just give us money. Let us spend it without standards." They shouldn't do that.

Sharp: It's interesting to hear a judge talk about the prison system, because of the role you play.

Wollenberg: Well, there's quite a few judges quite interested in the prison system, and should be, properly.

The Relationship Between Federal District and Appellate Judges

Sharp: The last area of questioning that I have is on the relationship between the district and the federal appellate judges. I wondered if any of the cases that we've talked about today have made you have some feeling about this relationship. Like you were saying with Simpson v. Union Oil how you were a little perplexed by the guideline that supposedly was given to you by Justice Douglas. You had some difficulty working with it.

Wollenberg: That's right. What he really meant was pretty hard to tell, what he was referring to. You do get a few ignorant judges sometimes who just haven't got a real appreciation of the problems of the lower courts. I don't mean to knock the judges or anything of that kind. The point is that there are some silly things.

One of the silliest, I think, in the face of it now, is this Patty Hearst case and how she can ever go ahead with any more of a hearing--I shouldn't even be commenting on it now; it's an ongoing case. Maybe I'd better not.

Sharp: Do appellate judges tend to look at the law differently than trial judges?

Wollenberg: I guess they do. I don't know. I sit with them now and then as an appellate judge. I just did a couple of weeks ago. They do. Most of them haven't had any experience with trial work, the problems of the trial judge, or what a trial is really like. Many of them have never even tried cases.

- Sharp: Do you think that that should be a prerequisite for being an appellate judge?
- Wollenberg: Not necessarily; I wouldn't want it down as a prerequisite. But I think the individual before he's appointed should be considered for what is his experience in the field. I'd hate to take it as an absolute prerequisite of some kind, no. I don't think so. I think you'd lose a lot of fine people.
- Sharp: I thought next time we'd talk a bit about your circuit court experience. I'll try to find some cases that speak about that.
- Wollenberg: That's not so great.
- Sharp: Well, it does give us a chance to compare your collegial decision making with your district court work.
- Wollenberg: Yes. I've worked in the First Circuit, and then the Seventh Circuit in Chicago. I spent a good deal of time in the First Circuit.
- Sharp: Okay. Well, that's all the questions I had. I hope I haven't stayed too long.
- Wollenberg: Oh, no.
- [end tape 12, side 1]

VIII CAREER AS A NORTHERN DISTRICT COURT JUDGE, PART 2

[Interview 6: November 13, 1980]

[begin tape 13, side 1]

Sex Discrimination in Employment: Sample Title VII Cases

Sharp: The case of Fischer v. Adams seemed really interesting to me for a lot of reasons.* I wondered if you would just begin by telling me what you saw as important in this particular case? Then we'll go from there.

Wollenberg: Of course, it concerned only really one issue, and that was the interpretation of a statute of Title VII [of the 1964 Civil Rights Act], to follow the court and its statements as to the earlier case concerning attorney's fees--whether or not the attorney's fees could be in Title VII cases after the amendment of the statutory authority.

I guess you wouldn't call it really a civil rights case. It's a case of pure statutory interpretation. I felt and expressed my feeling that the attorney's fees be allowed. It would be the entire compensation for the entire effort made by counsel for the winning party from the first time he stepped into the case and on the ticket, even going before the Civil Service Commission. This included his arguments and his preparation and his work before the commission, as well as in the courts.

Judge Levin Campbell, who dissented in the case, clearly was of the opinion that you couldn't go back that far; that the statute and Congress never intended that they should go back that far. He thought the only thing that the court could consider was the effort and work of counsel before the court itself after it got there.

*572 F. 2d. 406 (1978).

Wollenberg: And, we interpreted who was the winning party in the case. This case, of course, had a very limited aspect in that the plaintiff had been successful before the commission. To obtain her rights--civil rights, now, we're talking about--it was unnecessary to come to the district court, or to the court system at all. However, she had been granted the right to an attorney's fee, among other things, if he was correct in his claims and successful in proving them. That's all that we've said here, is that she could go back and collect. She was therefore a successful litigant in the court system as well as in the commission action previously.

Judge Campbell disagreed with that, and that's what he said. He said he just didn't see that Congress meant, or how you could interpret the statute to come to the conclusion that the plaintiff in this case was a successful litigant.

Sharp: Campbell seemed more interested in the agency where the case ought to go back than he was almost in anything else. At the end of his dissent, he found great fault with the Civil Service Commission, and he said that's where the mistake was made.

Wollenberg: Well, but he admitted that he didn't find that they had the power to fix attorney's fees, which was the issue here. Now it isn't entirely lawful, because it's based on this fact, I think. He felt that the commission did not have the direct power to fix attorney's fees, and that there was no provision for that at all. No question that Congress says that attorney's fees are a court matter, and the litigant must be successful in his court action and so forth.

Therefore, since the commission did not have that power, nothing could happen there from which he could take an appeal or anything else. An action purely for attorney's fees is different from a civil rights action, and so on.

I felt that this was all one bit of litigation, in which you couldn't differentiate. He said you could. I said that's the essential difference.

Sharp: That's one of the things I wanted to ask you about. At page 410, in the lower right hand corner of the page, you used the ideas that came out of Parker v. Califano.* You said, [reads] "Attorney's fees are a particularly important tool to effectuate the purposes

*182 U.S. App. D.C. 322,561 F. 2d. 320 (1977).

- Sharp: of Title VII, of ending employment discrimination and redressing its effects...." That seemed to be the nut of what you were saying.
- Wollenberg: In other words, the statutory scene here provides for litigation. It provides for settlement of the suit by court action. Therefore, there is no other remedy; the plaintiff has no other place to go or thing to do except hire an attorney and do it. Now, if you're to give him that right, and if he is to come out whole and be successful, and you say, "You must go to court, and due to the technicalities of the law and the courts and all other concerns, you should have an attorney if you're going to do it properly," he is entitled to an attorney's fee.
- Sharp: And there's some sort of penalty involved if you make the woman in this case pay for--
- Wollenberg: Pay for her success. Yes, pay for what she was entitled to in the first place. Yes. I don't think there's any question about that. I think that's what these cases said--although it's a long time since I've looked at these citations. I can't tell you of Parker v. Califano at all.
- Sharp: You also relied on the Civil Rights Attorney's Fees Award Act of 1976, which you talk about on the top of the next page. You talk about Congressional intent in that act, and that supports your decision in this case, as well as the precedent of Parker v. Califano.
- Wollenberg: Yes. In other words, that the plaintiff was the aggrieved person and had to be made whole for the damage done her. To make her whole, part of that would be to pay her expenses, a big item being her attorney's fees.
- Sharp: The interesting part about this case was that, besides this clarification of the attorney's fees problem, the case seemed to outline the steps that this particular federal employee had to go through to recover her status, her back pay, and compensation for the money she had spent on the attorney's fees. You traced her going to the Equal Employment Opportunity counselor, the review by the Civil Service Complaints Examiner, the appeal to the Civil Service Commission, and then the suit in the district court to recover her back pay and the attorney's fees. She got the back pay, but not the attorney's fees. Then this ended up in the First Circuit Court.
- Wollenberg: And an interest item, which she was not entitled to.
- Sharp: I wondered if this case was typical of many of the Title VII cases that you might have heard?

Wollenberg: Do you mean the attorney's feels issue was typical? No. There have been very few of these, because it's pretty well put to rest now. I don't think they're coming up with anything.

Sharp: But there were many of these--?

Wollenberg: Title VII cases? Yes. We had a big rash of them for a while. We still have quite a few. There's a fascinating one going on now.

Sharp: Which is that?

Wollenberg: I don't know the name of it. It has been before Judge Alfonzo Zirpoli. It involves the Berkeley Police Department and a woman who had gone through the academy. There were also little incidents she complained of while she was in the academy. The class at the end has a dinner. At Berkeley--of all places! Wait till you hear the story. The chief is presiding at the dinner, and he gets up and speaks. He talks about her most of the time--sexist remarks, there's no question. Things about her that concern her sex and so forth.

She testified at the trial that she thought this was a great joke; she saw humor in it. She thought they were kidding and razzing, but she took it and laughed and made some wisecracks back. When he got through with his talk, he took a big black cigar out of his pocket. She was sitting right across a small table from him, something less than she describes it, less than it was, and he takes this cigar out of his pocket, lights it, and reaches across, and shoves it in her mouth and says, "Now you asked for it, smoke it!" something like that. Now, it's pretty hard to believe that a Berkeley--I forget which chief it was--I think he's still chief.

Then there was another incident where there was a situation. She is off duty, she was wearing a tee-shirt with some kind of a design on it, but following the regulations of the police department, carrying her gun. There was a holdup. Two officers were chasing somebody. She found herself walking down the street to the grocery store, or another store, right in the middle of it. The man running, the robber or something, pulled his gun to do something, and she pulled her gun, and took a shot, and saved a couple of cops' lives.

But in doing it, I don't think she killed him, she wounded him badly, but then there was a big to-do about she should have acted faster, and that "she waited too long," and she didn't pull her gun until it looked as though she was going to get shot herself, and so on.

Wollenberg: At the hearings, they went after her pretty strong. She's no longer with the department; she's now in the Alameda County Sheriff's office. She left the department after this incident. But it's a very interesting case--it has got overt acts that are admitted to have happened, like the cigar thing, crazy things like that, and, the remarks, which I can't repeat because I didn't hear the testimony. It involves the Berkeley department. And everybody around here is saying, "My God! In Berkeley?" Like the ad, "Farms in Berkeley?" [laughs]

Sharp: Is the evidence, and finding out what really happened in Title VII cases a very tricky--?

Wollenberg: Well, it's not tricky. What it is is that so many of the remarks made, are all subject to interpretation. If there is any wrong intent or any direct intent in things, sure, it makes it difficult. They're not all successful cases.

Sexual harrassment enters in a great deal--overt acts. The foreman says to the girl in the manufacturing line, "If you want to get along, what are you doing this weekend?" Sexual favors or something, she testifies to that.

One defense I had, about five girls came in and testified, "Ah! He talked the same way to me. He said it in front of people. We've heard him say it to everybody. That's the kind of guy he is; he talks that way. But it's never beyond talk. We've never beyond talk. We've never had any trouble with him. It's just yak, it's talk; it's his idea of being funny, because he always laughs his head off when he makes a sexual advance. We don't think he really means it. If one of us took him up, he'd probably drop dead!"

I had that kind of testimony from five or six women on the line coming in and saying, "Sure, we heard him say that to the plaintiff. But he said it to me, and he said it to the other girls. He always says it. That's the way he talks, the way he lives. It's his manner. It's part of his culture or something. It's the way he thinks you should deal with women."

Are you going to change that whole man, and say that his company, because he's a foreman, is prejudiced and sex-minded? It is a terrific problem for the courts, and most of those cases are not successful.

Sharp: Because it's really hard to pin down exactly what the wrong was?

Wollenberg: Well, the proof is there in everything I've just told you, the fellow who always did things like this. Everyone said he did it. He ultimately came in and said, "Yes, I've talked that way. But nothing's ever happened."

- Sharp: Are these kinds of cases generally appealed, so they end up as circuit court cases?
- Wollenberg: Not necessarily. If the judge writes a good opinion and expresses why and everything, they're frequently ended. They're not all appealed, that I know. It's an expensive thing, to carry a civil trial like that to an appeal. The transcript has to be written up, testimony, all of that.
- Sharp: I wondered about your decision-making process in this particular case, Fischer v. Adams, how you and Judge Frank Coffin came to the conclusion that you did, that she should be awarded attorney's fees for the commission work as well as for his work in the appellate case.
- Wollenberg: I think just based on the reasoning that we discussed a few minutes ago. Take the thing as a whole, and that she had to go through this to be successful and to exert her rights she had under the Title VII and under the statute, she had to go through the entire process. The law says, "You have to do it this way."
- Sharp: Were you in agreement with Judge Coffin about everything?
- Wollenberg: I think so. I can't recall that there was any disagreement. It was at the conference after the thing that we decided to write the opinion.
- Sharp: How did you deal with Judge Levin Campbell's dissent?
- Wollenberg: We touched on it, and told him we didn't agree with him, and [had made] an attempt to agree with him. He said that there wasn't any more to do, and he wanted to file the dissent. He had given us a memo expressing his views.
- Sharp: I wondered what the impact was of these new 1972 provisions to the Civil Rights Act of 1964 which applied the act to federal employees, if this brought a whole sweep of new cases into the district courts, and then into the appellate courts?
- Wollenberg: I think it has. I think attorneys want to do that because of a contingency. Successful. They settle the amount of attorney fees usually when they settle the case.

Notes on Appellate Sitting: Cases and Relations

- Sharp: I'd like to talk more about the appellate process overall and your position in it. I wondered first of all when you first began sitting on circuit courts?
- Wollenberg: Right after I came on the district court bench. It's customary for the Ninth Circuit Court of Appeals within the first month or six weeks or so to ask the judges to come over and sit on the panel, so they'll learn the appellate process, the mystery of it.
- Sharp: What was the first circuit court you sat on?
- Wollenberg: The Ninth Circuit.
- Sharp: Do you remember the first case at all?
- Wollenberg: No. I can remember an early case that involved Mickey Cohen, the Los Angeles gangster, if you recall, who was shot in prison and collected from the United States for malpractice in connection with their treatment of him. But this case didn't involve that. It involved other convictions. It was an ACLU [American Civil Liberties Union] case. They represented him.
- Sharp: I wondered what you had enjoyed so far most about being an appellate judge?
- Wollenberg: Well, mainly the contact with other judges--the appellate [trial?] court, you know, is entirely different from the collegiate court. You have to get someone else to agree with you, as Fischer v. Adams demonstrates. To that extent, you're not the independent soul that you are as a district judge. That makes a difference. That's what Calvert Magruder is talking about in that article you've got here.* I prefer the district court, very much.
- Sharp: Because of the independence?
- Wollenberg: Because of the independence, because all you have before you in the court of appeals is the printed record. There's nothing live or vibrant. Nothing exists over there but a mass of papers, in the court of appeals.

*The interviewer sent Judge Wollenberg an excerpt from Marvin Schick's book, Learned Hand's Court, Baltimore: Johns Hopkins Press, 1970, in which Judge Calvert Magruder talked about the relationship between the appellate judge and the district court judge. See Schick, pp. 133-134.

- Sharp: There's no advocacy?
- Wollenberg: Yes, there are arguments that are oral arguments.
- Sharp: But it's not very interesting?
- Wollenberg: Well, at times it can be. It depends on the lawyers and the case.
- Sharp: But there's no interchange between the attorneys and the witnesses and all of that. It's all gone.
- Wollenberg: There are no witnesses. They're all gone. You're bound by the record that you have, the printed record.
- Sharp: What do you enjoy least about being an appellate judge, then?
- Wollenberg: The least? Well, I guess it's that thing we were talking about. But in its present system, it's a great protection. It insures a different view; it insures that you have to have two votes out of three on the bench to be successful to have been on a three-judge panel. In certain circumstances, they have en banc hearings.
- Sharp: Tell me a bit more about the decision-making process on a circuit court panel of three judges. How does that happen?
- Wollenberg: You mean what they actually go through?
- Sharp: How do the judges talk to each other? How do they convince each other of their position on a case?
- Wollenberg: Well, on the Ninth Circuit, the cases are assigned. I'll show you that's all they're doing [gestures to stack of case files on table].
- Sharp: That's a high stack!
- Wollenberg: I'm right in the middle of a transcript of a trial. We get in advance, maybe a month, about three weeks to six weeks ahead, the cases that you're going to be hearing on that day. Maybe three or four, five. Then the senior on the court assigns to the rest of the court a case or two cases, whatever is necessary to cover them all, just to do a bench memo, nothing else. It isn't necessarily to write the case. He does a bench memo which he circulates. I always do my own anyway. Do others as well, but I look over the bench memos. The court here now has over the last year or so, staff attorneys, as they're called, who prepare also bench memos on certain cases. Not all of them, but

Wollenberg: many of them. They circulate those to the panel. Many of the cases are sort of set for hearing, and the hearing takes place. We argue.

Some hearings are not necessary, it's determined. Panel members then order that there must be no hearing. After the hearing, after the argument, the custom here is for the panel to meet and go through all the cases and have discussions, in which everybody expresses their opinion and what they think. At that hearing, the senior judge on the panel will indicate he's going to assign somebody, or he will say, "I'll send you a memo and let you know who's going to get this case."

If I get the case, I write up a draft opinion. I circulate it to the other two for their comment. That's when I get a memo back. They say, "We agree with you, or we think this little bit should be changed," or "Would it be a better idea to emphasize this case instead of that case," or something like that. There are a lot of nits that are always in it, you know. Somebody has got a different idea of how you should express something. You can accept changes; that doesn't necessarily change what you're going to do with the case.

Sharp: So a lot of it is done on paper rather than sitting around a table?

Wollenberg: Practically all is done on paper. Sitting around the table is the early discussion right after the oral arguments. Impressions of what you heard and what you want to do.

Sharp: I wondered how decisions made in circuit courts affect other circuit courts?

Wollenberg: Well, they're used for either judge--he isn't bound by them--it's stare decisis, it's how one court reasons. I doubt that I'll say I agree with him or I disagree with him, or what distinguishes him.

Sharp: I noticed that you had used them in the Fischer v. Adams case.

Wollenberg: Yes.

Sharp: How does the quality of advocacy differ in a circuit court as opposed to a district court?

Wollenberg: Well, I wouldn't say it differs a great deal. It's just that sometimes in a court of appeals they're just as bumbling around as they do in the district court.

Wollenberg: Yet there are lawyers who are not entirely successful at home as trial lawyers who do very good appellate work--write well, sincerely.

Sharp: But they just deal better with judges perhaps than with witnesses and the whole network of--

Wollenberg: That's right, whatever the reason is.

Sharp: If you have a panel of three circuit judges including yourself sitting as a circuit court judge, there would be other judges in the same circuit hearing other cases. Do they sometimes hear about a case that you're working on with two other judges and have some impressions for you of your case? Or is there any contact--?

Wollenberg: No, I never had anything like that.

There can be conflict in that different panels will be working on. [Some panels]

[end tape 13, side 1; begin tape 13, side 2]

Wollenberg: might [work] a little differently than the other panels. There might be a conflict in that. If that occurs, then that's when parties would petition and ask for a hearing en banc, where you have conflict in panels.

Sharp: Do some circuit courts differ in their mood or style regarding dissent?

Wollenberg: Not that I know of. I've never heard of any on the courts I've been on and served on. There's only three: the Ninth Circuit, the Seventh Circuit, and the First Circuit. Dissent has been treated just the same.

Sharp: I just wondered if there was some ill feeling on the part of the judges who did dissent.

Wollenberg: No. I've never heard anything about that.

Sharp: That's a rumor.

Wollenberg: I've heard judges say, "I disagree with him, and he's a rum-dum-dummy!" or "I can't understand his reasoning," or something of that kind. I don't think it goes beyond that.

There are courts where somebody gets in the habit of dissenting all the time, and then he'll get a reputation of "he just dissents to dissent." And they'd use strong language

- Wollenberg: about other judges in their dissenting opinions, critical statements. That could cause unjust influence. But I've never run into it directly in my experience.
- Sharp: I wondered about your dissenting in circuit court cases, and what all leads up to your dissenting.
- Wollenberg: I guess I've dissented in very few. I guess every judge really has, unless he just becomes a chronic dissenter. Well, I've just disagreed, that's all. I thought that the case should be decided the other way, and I've said so.
- Sharp: Do you consider the reactions of your circuit court judges when you are thinking about dissenting?
- Wollenberg: You mean the personal reaction, or their reaction to my reasoning?
- Sharp: The personal reaction.
- Wollenberg: No, I've never had any personal problems when I've dissented in cases. It never changed our relationship in any way whatsoever when I've said I disagree.
- Sharp: You deal with each other as judges with cases, but you're also human beings. There is that element of give and take, which you have compared to being in the legislature.
- Wollenbert: It's true. Those things can happen. I have never had any problems with that type of thing on that basis.
- Sharp: What's the most interesting circuit to sit on of the First, Seventh, and Ninth?
- Wollenberg: Well, to me, of course the situation was so different in the first one I sat on. When I went back there, to the First Circuit, there were only two judges actually in the court of appeals--Judge Campbell and Judge Coffin. They were shy a judge and had been for a year or more. No appointments had been made; there was some kind of a political log jam up there between Kennedy and Brooke at the time.* There hadn't been any appointments made. They had a heavy calendar. The two men [Campbell and Coffin] were very conscientious and very hard-working judges, very

*This may be a reference to Edward M. Kennedy and Edward W. Brooke, both members of the U.S. Senate Judiciary Committee.

Wollenberg: strictly New England people and lovely people. Very top law schools, top law firms, very high quality, both of them. They worked very hard.

Judge Albert Tuttle, who was the senior circuit judge from the Fifth Circuit was the chief down there. he was also assigned at the same time. So there were four of us, really. They rotated around so they all did about an equal amount of work.

Sharp: Are there some circuits that you haven't sat on that you'd like to because you heard that they did interesting things?

Wollenberg: Not really. Not that I would have made the effort to sit on.

The Second Circuit, New York City, is always interesting. There were a couple of times, I couldn't make it, but they would have had me.

Sharp: Tell me a bit about your relationship with the circuit judges whose home it is, and you as a visitor coming in. How does that work?

Wollenberg: It's nothing. I mean, it's very nice.

Sharp: Like having a temporary job?

Wollenberg: Sure. They all have good-sized staffs, and people assigned to take good care of you. They see that you get everything you want and need, assistance you may need. I bring my own law clerk when I go to another court. But also, I have the help and assistance of any other person around. They are willing and very attentive.

And, they're very nice socially. They've had me to dinner in their homes. A chief judge in Chicago will be out here next week.

Sharp: Who is that?

Wollenberg: Fairchild. Tom [Thomas E.] Fairchild. He's very nice. He had several court of appeals seniors--the older people--of his court to a lovely dinner party at home, an event for Mrs. Wollenberg and myself.

Sharp: Does she generally go?

Wollenberg: Yes.

Sharp: How long do you stay when you go?

Wollenberg: Well, it all depends. You adjust your calendars--I think I was three weeks in Boston. I was out two or three weeks in Chicago.

Sharp: How do you learn the law of a particular circuit?

Wollenberg: The same way you do it in your own circuit. Look up the cases.

Sharp: Is a law clerk of special value when you're circuit court sitting somewhere else, then?

Wollenberg: No. You want the cases, no matter what circuit, that are apropos, unless the law is settled in a certain circuit. If it is, you want those cases as you get them.

You have the briefs to start with. Careful attorneys, good counsel, give you a terrific start in that brief. Whether you apply their argument or not, there are certain cases that are apropos. Those cases, really, they have to cite. Extremely important. So you start with those, and then go on from there.

Sharp: Has there been a difference in conformity with the Federal Rules of Civil Procedure in circuits you've sat on?

Wollenberg: Not really. Some of the cases interpret rules differently. Nothing startling that really gives you trouble. Follow the rules, that's it.

Sharp: Is there a difference in accountability that you might feel if you're a district court judge? Does that change when you're a circuit court judge?

Wollenberg: Now, you mean the accountability to do a thorough, complete job in all the ways?

Sharp: Yes. To do a thorough job, and to come up with a certain decision?

Wollenberg: Proper result according to your standards.

Sharp: Does that change when you're circuit court sitting?

Wollenberg: No, unless you're so desirous to bring about a result that you'll get in and compromise to get another vote or something, to make yours the majority, if there was any problem with it. I've never had any problem with it. I don't care, because my feeling is that if the other two judges disagree with me, I take their opinions and work on them. If I can agree with them, I'll agree with them. If I think, "Well, really, it's just some minor little thing that's making us diverted, let's forget that, and I'll go along with them, if it's two against me."

- Wollenberg: Or, if I think it's important and that it should be expressed that we don't agree, I express it.
- Sharp: Have you ever felt burned out as a district court judge?
- Wollenberg: Burned out? If you mean, was I just fed up with the job?
- Sharp: Yes.
- Wollenberg: No, I've never felt that way. I think it's the greatest job a lawyer can have. I think it's the best of all; I think it's much more interesting than to be a court of appeals judge; I think it's more alive. You're dealing with people, not just abstract issues.
- Sharp: Has your temporary job of circuit court sitting reinforced how you felt already about being a district court judge?
- Wollenberg: I guess it does, although I still do enjoy the experience. As I say, I have these cases I'm working on now.
- Sharp: Those for the Ninth Circuit?
- Wollenberg: Yes.
- Sharp: Are you ever frustrated as a district court judge?
- Wollenberg: Do you mean with--what? Frustrated with the law? With the people who are around you? With the services that you feel the court should have and doesn't have or things of that kind?
- Sharp: Yes, all those. But, I also wondered if you felt frustrated in wanting to make a certain decision, wanting to write a decision a certain way, but as a district court judge thinking that you might be overturned at the higher level?
- Wollenberg: Oh, you mean do I look ahead and worry about what the court of appeals is going to do?
- Sharp: Yes.
- Wollenberg: I don't believe I do, no. One of the things that [I have dealt with] ever since I was on the state court--they have their duties, they're there, and if they come to a conclusion that's different from mine, and it's properly arrived at in their opinion, certainly I would take it.

We spent a lot of time on that liquor thing. That went on and on and on for what--thirty years.

Sharp: That came all the way around.

Wollenberg: Of course, it came all the way around again in another form that they had arrived at.

No, I wasn't frustrated at that at all. That's our system of justice. I think you have to have an appellate system. If the courts are honest, forthright in their approach to things, that's the duty of the system, and that's the strength of the system. It gives me a feeling that there's somebody behind me to correct my mistakes. I'll grant it, okay. They consider it a mistake; they're there for that purpose, and they should correct. Just as I would do if I were there, and correct another judge. There's no feeling of frustration in that.

Sharp: Were any of your circuit court experiences feelers for permanent appointment to an appellate seat?

Wollenberg: No. I don't think I would have ever accepted. Except, maybe, when I was at the point of two, three years at the most from retirement or something. No, I would stay. I know of other judges on this court that have actually turned down offers.

Sharp: On the Ninth Circuit?

Wollenberg: On the Ninth Circuit.

Sharp: Let's talk about Judge Calvert Magruder's ideas.* I wondered what your opinion was of what he said about the relationship between the trial court and the intermediate appellate.

Wollenberg: Well, of course you'd meet and talk, [to see] if they could be friends and so on. I think that that's true in everything in life, isn't it? I mean, my opinions, and what I believe, is the sum total of all my experiences and all the people I know, perhaps, and don't know, those I respect and don't respect, and those that I don't think so much of. He's talking about the problems of a collegial court where people have to get together to decide.

True or false, the things they say in The Brethren, illustrate what Magruder is talking about.** Apparently, Magruder had some trouble with that, and it bothered him in his life. It's bothered him along the line. He's normally very affable--I knew him when he was at Hastings.

*See p. 318.

**The Brethren: Inside the Supreme Court, by Bob Woodward. New York: Simon and Schuster, 1979.

Sharp: What sort of man was he?

Wollenberg: Oh, a fine fellow. Very fine student.

Sharp: He said that circuit court judges have a better chance of being right in a case, because they have more time for reflection and study; the trial court judge has the urgency and the press of trial proceedings against him.

Wollenberg: He probably served on a court that was pretty sleepy for a while. That court over there has just got all the pressures in the world to get this stuff out.

Sharp: Which court is this?

Wollenberg: The court of appeals. They've got a lot of pressure. They got a terrific calendar, and they got so many members, I don't imagine they all know each other. So it's got all kinds of problems that I don't think he even conceived existed while he was serving on it by assignment of the court.

Sharp: When you were sitting as a circuit court judge, did you think you had a better chance of being right in a case, because you had more time?

Wollenberg: I don't think so. I think I have a better chance of being right because I can look the witness in the eye. I can say, "Well, this all sounds logical, but I just don't like what I'm hearing. I don't think it matches up." I think I can get direct impressions that way.

Sharp: Do you get direct impressions by active questioning, or other means?

Wollenberg: Some questioning. But, you get your impressions also from the conduct of the witness and observation.

And the attorneys. It's a little different. The trial attorney may be the same man that argues it in the court of appeals. You wouldn't recognize him. His conduct in the courtroom--what he's trying to do--where's he going isn't displayed at all in the printed record. You're shocked to know what happened.

Sharp: What do you think the impact would be of TV cameras in your courtroom?

Wollenberg: I'm afraid of them with people trying cases with the idea of [appealing] not to the court, but to the general public. You have a lot of planned, staged business that maybe wouldn't be affecting the court or the jury at all, but it would be going through a lot of things that they want the people to see.

Sharp: One of the arguments for using TV cameras is that, "Well, you know, the witnesses wouldn't lie--"

Wollenberg: Why not?

Sharp: Well, if they knew that there were hundreds or thousands of people watching them on TV.

Wollenberg: A lot of people would collapse and wouldn't be able to express themselves for that same reason. You could befuddle a witness. A good cross-examiner and a skillful attorney who is also on that TV thing, could make a witness look rather sick. I think the less stagey and theatrical, which is truly what you're encouraging when you put it out on TV, the more you're apt to get to the bottom, the truth of what's going on.

Sharp: You've talked to me a little bit earlier today about the interaction between the appellate and trial courts here in the Ninth Circuit. I wondered if you could just tell me a bit more about the way the two courts interact, the people on the courts interact with each other.

Wollenberg: Well, now, that's being developed more and more. The Judicial Council, which is made up of the court of appeals, has a lot of committees that have district judges on them. There's no district judge on the council itself, and there's a movement now to get district judge's representation on the council. They work on projects, and on law rules changes and so on. That's going on all the time. For the most part, that's good, if in the long run, the district judge is going to have anything to say about how he's going to run his own court. Different circuits have entirely different attitudes toward their district judges.

The interaction can be very good and worthwhile, however I think district judges feel pretty frustrated in the Ninth Circuit. A lot of things come out without the consultation that should have occurred, or disregarding the consultation entirely. It makes a difference, because the district judge's complaint always is, "Most of those fellows have never been district judges, trial judges. Many of them have never been trial attorneys, and have never been in the courtroom." That doesn't necessarily follow that these all should be reasons to

Wollenberg: appoint a judge, but circuit judges should be cognizant of the fact that when they're rule-making, and doing their administrative work, that they should perhaps give a little more weight to the district judges' opinion. After all, who's the man on the trial bench?

Sharp: When do you think there will be a district court judge on--?

Wollenberg: I don't know. This matter's been on a bill, before Congress, to put them on the council. Of course, the statute provides that an active court of appeals judge is. But it should be more than one judge. It should be some representation that has meaning.

Sharp: Does that have to go through the Judicial Conference and then down?

Wollenberg: Well, it'll usually go through the Judicial Conference for approval before it goes over to the Congress.

The Federal Judiciary: Judicial Review and Reasoning, the
Role of the Judicial Conference, Selection of Judges, and
Other Topics of Concern

Sharp: I now have some questions on the federal judiciary as a whole, and the first part of this is about the role of the federal judiciary with respect to federal legislation. In the past three interviews, we've talked about your antitrust cases, some of the conscientious objector cases, bankruptcy cases, employee discrimination, and some other issues. I wondered, after hearing so many different kinds of cases dealing with all these federal laws, that you had some conclusion you'd come to about the role of the federal judiciary?

Wollenberg: Certainly. I think that it's the one most important thing. An independent judiciary is necessary. It's the only protection that the individual in this country has against tyranny in the government. It's the thing that protects the sanctity of elections, whether you like the results and are surprised by them or not. It's the court that protects the individual, guarantees him his rights under the constitution. Throughout history, the courts have proved that.

Sharp: Even though on any given case, the law can be interpreted so differently. As we looked at some of those antitrust cases that you had, that got up to the circuit court and were interpreted quite differently. So even though there was judicial review, you know--

Wollenberg: It's just the same as if it had been interpreted the same way right through. The judicial review is there. It's not what Wollenberg and his [court] has said, that the case is to go over here. He's just one little cog in the whole business. As long as he is independent and calls them as he sees them, if he calls them wrong, they go through judicial review and it's reversed, it's changed. So if you call them right, they say so.

Sharp: As a district judge, what's your special position in the federal judiciary? You're the judge that sees every case come in.

Wollenberg: Yes. The cases are heard. Except in certain matters that have been excepted, it's the court of original jurisdiction.

The case, if filed, then starts. Anything that the court of appeals can do, or look at, or change, or consider comes from the district court. They can't go out and take the more interesting ones. They can go back to the district judge and say, "We want you to take it. Here are certain things," and order it. But he does it. All they get to consider over there is what the district judge sends over to them. They can't afford to look through those.

Sharp: We've talked about judge-made law before. Since then I was reading Levi's Introduction to Legal Reasoning.^{*} I was interested in getting your views on legal reasoning, and if you had some sort of definition in mind of what you think legal reasoning is.

Wollenberg: I think that true legal reasoning can't just be narrowed to an intellectual exercise only. I think you have to consider the realities of the effects of your power. A judge has tremendous power, particularly a federal judge in the district court. The power is almost awe-inspiring. It's there. Thank goodness, I don't know of any judges who are using it beyond good reason. But this power, if you realize that you have it and what harm it may do as well as good, is exercised. I think all of this enters into the way you're going to go.

As we just said, we were talking about earlier in Fischer v. Adams. We said that Mrs. Fischer had to do what she did or she wouldn't have gotten any of her rights. That

^{*}Edward H. Levi, An Introduction to Legal Reasoning. Chicago and London: University of Chicago Press, 1949.

Wollenberg: isn't a real, serious intellectual exercise. You start from there, then you say, "But the statute says thus, thus, and thus." You say, "Well, the Congress really intended...."

[end tape 13, side 2; begin tape 14, side 1]

Wollenberg: She had obligated herself to pay out, and that's attorney's fees. She couldn't have done a thing without the services of a lawyer. I think that's part of legal reasoning. Whether a strict constructionist would consider that or not, I doubt. I don't think so.

Sharp: Part of it yes, part of it no. Because Edward Levi talks about the judge deciding what legislative intent was, and the judge's picking his way through different cases, previous cases, to get some sense of where the law has gone and what's been done to it, then putting it together. But, he doesn't really talk about the morality of how the judge then puts it all together. He talks about it as an intellectual exercise, with a little more.

Wollenberg: One of the best illustrations is--if you will recall the school cases, with Chief Justice Earl Warren and all those opinions, that say it was not a legal opinion at all, that it was purely an exercise of practicality. Where are we in this world if you can't have criticisms of opinions? If he stuck to strict legal construction at that time, you'd do what they had done before.

Sharp: That gets us back again to Judge Frank Johnson.

Wollenberg: Yes, that's right. That's where we are right now, to his approach to these things. If you will recall, we discussed the Bill Moyers interview earlier. I think this is one of the things that he did say, clearly, that in his reasoning in these things, he'd lived it all his life. He knew what was going on, no one was pulling the wool over his eyes. They weren't fooling him by getting him off into an intellectual cloud sometimes and diverting from the true issues.

Sharp: But he paid dearly for it, from what you told me.

Wollenberg: Well, I know. But that's one of the things he decided he was going to do with his life. Perhaps he wouldn't have been happy in his life at all if he hadn't had the opportunity to serve, regardless of what he paid for it. It's like the true patriot who goes into battle and leads the charge with the American flag, and runs right into the machine gun and gets mowed down.

Sharp: You told me earlier that you had talked with Johnson.

Wollenberg: Many times.

Sharp: And that one point, I guess it was the point after they had burned the cross on his lawn, is that--?

Wollenberg: Yes, I talked to him after that.

Sharp: How was he feeling about that, and what had happened?

Wollenberg: The burning of the cross on his lawn? Oh, I think when they found the person that did it, he said, "Oh, don't do anything to him. He doesn't know any better." He didn't want to prosecute him; he didn't want to do anything to him. He said he had him go out and re-seed his lawn, and work for a couple of weekends to get it all put back together again. He didn't want anything to happen.

Sharp: But you also had told me about his son.

Wollenberg: Yes, his son was very sad and [it was] generally felt that it was the ostracism of the other kids, and he was not accepted, and so on, that threw him off the track to such an extent that he came to this very, very sad and unhappy ending.

Old Frank Johnson wouldn't have wanted all these things to happen. I haven't implied by that by saying that he would devote his life. But, I think that having done that and having believed in what he was doing, nothing would have changed him. All of these threats against him, all of this pressure against him, didn't deter him in any way. They meant that. Governor Wallace meant it. It killed him.

Sharp: Did anybody ever burn a cross on your lawn or--

Wollenberg: No.

Sharp: --anything that was like that?

Wollenberg: I've never had any real impertinence. The only one around here that had it, that I know of, Cecil Poole had a cross burned in his lawn.

Sharp: Have there been other sorts of unpleasant experiences as a result of your cases or decisions you've made in your cases?

Wollenberg: No. I've never had anybody approach me to do anything improper, or anything of that kind. I've never had any problems of this kind.

Sharp: How do you regard your power to disregard prior cases in writing a decision?

Wollenberg: If I think strongly enough about an issue, if I think that I have the answer to it, and I am able to write it and express it in a strong manner: "it's time a change came about in the law," and I see some tendencies in that direction, and I think it's correct and right, I would use that power--and that could be reversed very quickly.

Sharp: I thought we might talk just a bit about the role of the Judicial Conference. I wondered what you see as the ideal role for the Judicial Conference to play?

Wollenberg: Well, the Judicial Conference--you really could describe it as the legislative body of the courts. The power to legislate decrees is purely in the chief justice, or the Supreme Court and the chief justice, as such, as the administrative power of the courts. It's clearly that, by statute, and by usage.

That power, being there, the Judicial Conference of the United States, the federal conference, is for his [chief justice?] benefit; anything it does, really is subject to his veto without question, if he can express himself clearly. [confusing passage deleted]

Sharp: I wondered about some of the issues that the Judicial Conference deals with. I sent you that article on district court judges' salaries from the Christian Science Monitor.^{*} I wondered, for instance, if the conference was going to make recommendations--

Wollenberg: It did, this week. On salary, you mean?

Sharp: Yes.

Wollenberg: Wait till you hear what it was!

Sharp: What did they come up with?

Wollenberg: The Administrative Office did this. I don't know who the hell--whether it's the conference passed the resolution, I don't know. They took the salaries that there were a couple of years ago--but it comes up to \$107,000. Ridiculous!

Sharp: That's more than twice.

Wollenberg: That's a \$52,500 raise.

^{*}21 August 1980, "The Judge is Worthy of His Hire."

Sharp: What would you do with it?

Wollenberg: Well, nowadays it isn't hard to do something with it.

Sharp: Now what happens with that recommendation?

Wollenberg: It just goes to this commission.* They consider it.

Sharp: What other sorts of issues has the Judicial Conference dealt with recently?

Wollenberg: Oh, they're dealing constantly with matters concerning the criminal rules, civil rules, the administration of cases, ethical concepts of the judges, and so on.

Sharp: Do you think they seem pretty in touch?

Wollenberg: Oh, yes. It's the judges themselves. They're in touch. They're good men. Yes, there's an equal number of court of appeals and bankruptcy judges now that belong on it.

Sharp: What do you think the major problems of the federal judiciary are now?

Wollenberg: I think it's getting very, very big. I mean, I hate to see the number of judges. But, I guess it's pretty much necessary with the work and the calendar. I can see why we have them; it's too bad we have to have so many.

I think that we have to realize that in appointment of judges, the appointing power of the president must be based on getting the finest and the best and the ablest people available to serve as judges. Unless you have that, a strong independent judiciary, you've lost the one thing that we have in this country that protects the individual from his government. I think you always have to have that check. Without that check, there'll be problems, trouble.

I didn't like Mr. [Jimmy] Carter's arguments while he was campaigning to the effect that he had done such a beautiful job with the judiciary: he had appointed women, blacks and Chicanos, he said. Fine, I have no objection to that, as such. But he didn't say, "I've appointed the best people available, fine people." He didn't say that. Regardless of whether they're blacks-- The attitude, therefore, of the appointing power, is a very important thing--an appreciation of what the courts are about.

*U.S. Commission on Executive, Legislative, and Judicial Salaries.

Sharp: So it's two separate problems.

Wollenberg: There was a time when I can remember my grandfather, for example, thought a federal judge was the greatest thing on earth. He was not only respected, but the fact that he was a federal judge meant that he was above the cut of ordinary people, regardless of what his politics may have been, or who may have appointed him, or anything like that. The fact that he sat as a federal judge meant so much. I don't know whether that does today. Those are the type of people, I think, that we should have. People who can command respect. I think there are a great many of them on the bench, thank goodness. They usually come through when the pinch is on.

Sharp: I wondered what you thought, in reflecting back on the process of your own appointment, and the appointment of other federal judges that you've seen, of the current moves to have federal judges nominated by a judicial selection commission.

Wollenberg: Again, what standards do you give those commissions? And, who are the people on the commissions? If you get the finest people in the community that you have confidence in, regardless of where they come from and who they are, and they conscientiously go to work on it, that's fine. But, I think that the office of the attorney general--and the old method--are just as competent to do the job too. I don't say that it all should be in the hands of the lawyers, or anything like that.

Sharp: Non-lawyer members on these commissions, if they were qualified people, would be a good idea?

Wollenberg: Sure. Any member, if they're qualified commission people.

Sharp: Here's a trick question: Supposing that a hundred years from now, somebody wrote a history of your years as a district court judge. What would you like to have them remember or find?

Wollenberg: I suppose what I would like is for them to be able to say that I discharged the duties of the office fairly, and impartially, and with the best interests that I thought of at the time of the litigants before me and of the people in general. My thing would be that I did the job that I was supposed to do, not that I changed anything. Sure, I'd be very proud to have a patent of some great innovation which worked to the benefit of the public. [pause]

Sharp: I just had seen this article about Max Kane.* I wondered what you saw as the role of administrative law judges within the federal system?

Wollenberg: Well, I think they're very important. There should be specialists in fields. You take labor, for example. They have a certain labor department and its people that hold hearings. You have a certain expertise in the field, very limited to that field. It's right and proper that they should make findings based on fact, just like a district court, and make recommendations to the commissions, which they do. Then the commission, with its expertise, can weigh their opinions and come to conclusions.

Sharp: That seems a pretty workable system.

Wollenberg: Yes. I think it is. Of course, I can't conceive how the courts could do the whole job. It's just too big, too much.

There was one time, if you'll recall, they thought we were going to have a labor court, like a tax court, it would just be labor. I don't think that should be a court. I think it's much better to have a hearing officer, who has expertise, who takes the testimony. He writes it up, and he makes findings and recommendations in connection with what he heard. Then he passes it on to the board or the commission, which is a commission being made up, theoretically, of all experts, who are going to look at that record and come up with a conclusion. One of them does it, I guess. Not the board. I think it's fine, and I think that that's true in other fields.

Sharp: Well, they certainly build on their specialization. They have their area of expertise, and they hear cases within that area and build up their knowledge and their judging ability that way.

Wollenberg: That's right. You see, the district court, the judge of the court has general jurisdiction. He's supposed to know everything. He can have a patent case tomorrow that involves the most intricate, delicate reasons and physical science of some kind. Tomorrow it'll be really nothing but a gadget.

Sharp: That's all of my questions about that, but I had a few post-election questions that I wanted to ask.

*San Francisco Chronicle, 21 October 1980, "Administrative Law Judges - Who Are they."

- Sharp: I wondered what you thought the impact of Ronald Reagan's presidency was going to be on the U.S. Supreme Court?*
- Wollenberg: Well, if he gets appointments, clearly he's going to appoint, as he has a right to. I'll have no objection if he can find the best possible people, with the frame of mind that he thinks is his line of thinking. He's going to appoint that type of person. We're going to have a conservative bench, not that you haven't got it right now. I think you have already.
- Sharp: We will just see a more conservative court and more conservative decisions. What more can you say about it?
- Wollenberg: I don't know what more you can say about it. What is a conservative opinion? I don't think it's going to change the law much from what we have now. There is a big feeling in this country about the criminal restraints on police and so on. There may be some changes with that. I don't think they'll be too radical from what we have right now.
- Sharp: You mean that police officers aren't treating prisoners--
- Wollenberg: Oh, no. I mean as to the searches and seizures and things of that kind.
- Sharp: Oh, that there need be more guidelines on searches on seizures, or less restriction?
- Wollenberg: Less, I should imagine. The police would be given wider berth.
- Sharp: Do you think that's a good idea?
- Wollenberg: Properly supervised, it seems all right--provided that you don't just tear down barriers that have existed all along.
- Sharp: The American Bar Association and some other groups have expressed some concern about the 1980 Republican platform, which called for appointment of judges who are against abortion. What do you think?
- Wollenberg: It's terrible. You can't do it on specific issues, any issue, I don't care what is it. The real type of man who ought to be a judge is going to refuse to answer such a question at this time in a hypothetical state, I think. I don't think you should have any restraint on the judge.

*See Christian Science Monitor, 10 November 1980, "Judicial Winds to Blow from Right or Moderate Direction?" by Julia Malone.

- Sharp: This idea that there would be a more conservative U.S. Supreme Court with Reagan's appointments--do you think that will filter down through the rest of the judiciary, that it will become more conservative?
- Wollenberg: Well, you mean his new appointments? Compared with what we have, yes, I think we would.
- Sharp: Do you consider yourself conservative politically?
- Wollenberg: I don't know what I am. I expect that I jump from issue to issue. I am conservative in some issues.
- Sharp: Do you think of yourself as a conservative judge?
- Wollenberg: No, I don't think so. I think very conservative in some matters, and I've been quite liberal in others.
- Sharp: Does that bother you?
- Wollenberg: No. I suppose that's what a real moderate is, isn't it?
- Sharp: I don't know.
- Wollenberg: I don't know either.
- Sharp: What do you think the elevation of Strom Thurmond to head of the Senate Judiciary Committee is going to do?
- Wollenberg: I don't know that it'll make too much of a difference, only on some issues. But it won't hurt to tighten up some of the penalties. It won't hurt at all to tighten them up, provided that in doing it he isn't taking away discretion advising the judge. There are some things, maybe, that a judge feels he'd like to be able to give more time to than he's been giving to. He would get that.
- There are two schools. One of them says that the first thing a sentencing judge should do is consider first how much time he's going to give in the penitentiary. The other says that the first you should do is determine, can you give him probation. If you can't, then go on to the next question--how much time. But, you consider probation first.
- Strom Thurmond has said frankly he is for higher penalties in drug cases and what else--one or two other things he said.
- Sharp: About first offenders.
- Wollenberg: Yes, I think that was it.

Sharp: Does that seem--?

Wollenberg: Well, not if he's talking about a drug dealer who has clearly been in the business. If he's talking about some poor first offender who wasn't in too deeply to begin with, then it could make a difference to that individual. As long as Thurmond doesn't make mandatory sentences; discretionary ones are better.

Sharp: When you were talking about those two schools of sentencing philosophy--do you consider yourself of the latter one, that considers whether or not you can put the person on probation?

Wollenberg: I do.

Sharp: I know that's been a special interest of yours for a long time.

Wollenberg: Did you see where I'm having a luncheon? *

Sharp: I did. I was most impressed.

Wollenberg: That lovely first issue of The Historical Reporter. **

Sharp: That was great!

Wollenberg: Wasn't that a good one? I thought they did a great job. Had a lot of interesting things in it.

Sharp: It shows that the historical society is really a going concern.

Wollenberg: Well, we're trying to make it that.
[end tape 14, side 1; begin tape 15, side 1]

Opening the Discussion on Sentencing Philosophy: A Glance
at Selected Cases

[Interview 7: December 18, 1980]

Sharp: Laurel Marken was kind enough to send me the list of cases so we can talk about sentencing.

*November 20, 1980.

**This is the publication of the Historical Society of the U.S. District Court for the Northern District of California. Judge Wollenberg is referring to Vol. 1, No. 1, published in Autumn 1980.

Wollenberg: Yes. She did that. The point I wanted to make with you now is that these things are confidential and you can see the reason they should be. Some of these people have served their time and are out in the community. We shouldn't be referring to them, I don't think, by the case name and individual that's involved. There's no use of writing something up and having it in the record all about them.

Sharp: Sure. Most of the questions I have are just real general.

Wollenberg: Yes, I appreciate that. I just mean, let's not be specific about who we're talking about.

Sharp: That's fine.

Wollenberg: We'll just simply talk about Mr. B, or something like that, if it's a tax fraud case.

Sharp: I wondered first of all why you picked these cases?

Wollenberg: Well, I didn't pick them; Laurel did. I only did to this extent: they're a good cross-section; they're all different cases. There's tax fraud; there's bank robbery; there's receiving stolen property; use of a telephone or interstate wire for fraudulent use. [reads] "Importation of heroin." "Possession and passing of counterfeit money." "Possession of cocaine with intent to distribute." And tax evasion. They're all different to some extent; they go pretty much across the board.

Sharp: Just to sort of set the scene, could you tell me just a bit about the cases and what was involved?

Wollenberg: Well, we have to do that individually, don't we? I know I have some idea about each one.

Sharp: I'll just make notes right down the line, that it's cases A through H. So the first case is A, the second case is B.

The first case is the tax fraud case. We had talked just a bit about taxes, tax evasion questions probably two interviews ago. I wondered if we could just start with that case, and you could tell me a bit about it.

Wollenberg: Sure. This case is a little different from the average. It was a scheme of tax fraud by a couple of people. The general scheme was as set forth in a general version proven at the trial. This was a jury trial. By the way, these cases are all the result of trials. They're not pleas of guilty or anything. That's why they were picked.

Wollenberg: The defendant was accused on two counts with both counts involving fraudulent and false statements, and involved adjusted close income for the two years. There's one count for \$51,000 with an unpaid tax of \$12,000 odd dollars.

He had been associated with another man who was a co-defendant in the case, and also convicted. He had also been associated with a financial group down in Beverly Hills that were in the insurance business. They were going to get new clients for the insurance business through their association with this defendant, and to share in some of the profits that would accrue, paying finder's fees for loans and things of that kind.

They met with a very prominent movie actor, who was well-known, and who wanted to buy a houseboat in Tiburon, I think it was. Yes, across the bay. A bank in the area had refused this movie actor a loan. So then these people stepped in, and they were to get him the money he needed somewhere in the neighborhood of \$35-40,000 to make up the difference for the home he wanted.

They transmitted a greater part of that to the account of this defendant, who was further up in northern California, in Healdsburg, I think, or some town up that way. He didn't account for the money; he kept it and didn't account for it. And in another count, a similar sort of a transaction, a complicated deal of some kind.

The jury, after listening to the evidence, was satisfied of the proof, and found him guilty.

He had a background, this particular defendant, of having been in another fraud case, not involving taxes, but a violation of some bank rules. He had been convicted, but that conviction had been set aside on appeal. So he'd had that prior, but that was a good many years before.

He had a family. He worked in a little business in a valley town down towards Bakersfield somewhere. I thought he should go to prison for a while. I sentenced him at that time, as I recall, and it says right here I did, to three years to run concurrently on each count, so that's a three-year sentence.

He appealed. The convictions were affirmed. As far as I know, he's either finished or doing his time now. I think he's finished, or just about getting parole.

Sharp: In the bank robbery case [case B], did that involve several different people and a complicated situation like case A?

Wollenberg: No, that wasn't so complicated. [pause] In this case--the defendant with another person, held up a bank, I think it was over in Moraga--Orinda. The bank was the Central Bank. The two of them went in, both were armed with guns, and so they were charged with armed bank robbery and convicted.

The defendant had a record of narcotics, and receiving stolen property, and several other offenses. He had like hit and run driving, speeding, drunk driving charges. He got on probation. This was mostly all over in Contra Costa County.

Sharp: Previous charges or previous convictions are all very important in deciding the sentencing?

Wollenberg: Well, they're important if they indicate tendency to violence, and use of guns, and things of that kind. They're important if they indicate a defendant's inability to pick himself up and get himself straightened out. Lots of fines in his case and lots of short county jail sentences.

They were very lucky in what happened here, going into the bank armed, a lot of people in the bank at the time, and all of that, that nobody was hurt, and no guns did go off. They were armed and loaded guns they had.

They were looking for him. The FBI hadn't found him yet, and about four or five days after the robbery, he did give himself up.

Sharp: Was a very large sum of money involved here?

Wollenberg: No. \$700 odd dollars. But it was armed. The probation officer and I both thought that it was not a case for probation. It was a rather serious offense, the manner in which it was executed; the robbery. I ended up giving him a sentence for nine years, which he would do approximately a third of it. The balance was parole. What he actually did, I don't know. This was way back--'74.

Sharp: In this sort of bank robbery case, is there quite a wide variety of sentencing terms available to you to choose from?

Wollenberg: If it's an armed bank robbery, anywhere up to twenty years. Anything along the line, up to twenty years.

Sharp: In this sort of case--and I have the same question about all the cases, really--how you put together your ideas about the sentencing involved? What all goes into making you decide?

Wollenberg: Yes. I think that's the only thing that's really interesting in talking about, not the specific case as such, except insofar as it would indicate what our thinking was.

There are certain things you look for. You have to develop some kind of a philosophy of what you're sentencing for. What are you trying to accomplish? Is it the general deterrence in the community? Is it deterrence to this individual? Do you want to put him completely out so that you remove him from the scene so that he can't commit crime in the general public? He can do it in a prison, but not out in the general public.

Do you believe in rehabilitation? Do you think anything is accomplished by it? If you listen to people like our Governor [Jerry] Brown, he says there's no such thing as rehabilitation--waste of time and effort and money and everything else. Well, I don't think you can do that. I think you have to have some faith that what you're doing is going to accomplish something for the individual himself. Otherwise, your alternative is to simply, "To the penitentiary or out," that he isn't going to do it again--we've got to believe that.

[There are cases of] a person who has never held a job over the years. He can't seem to hold a job, and there's no apparent reason for it. [He is] not a deprived person who had no means of training or anything for a job. There are a lot of those who are not deprived people who could have, but still didn't have, any preparation for jobs. [The question is then] whether or not, therefore, [he should be] in prison, or in some program, where he could be trained to do some work--and they do do some. They have some success. It's not a startling thing, but it's there. They work at it and they do have success in training and getting jobs, and in holding jobs and supporting themselves and their families. That's all part of rehabilitation. It's all very necessary.

You have to have some feeling of what you're going to do, what your plan is for a person. That doesn't mean any detailed plan of where he should go. We do advise the prison people, that is, we have the opportunity to advise the prison people, as to what we think should be done in connection with the individual, what we had in mind when we sentenced him, what parole terms we thought would be appropriate. You find many of these people make ideal prisoners when they're in, which is great, and they can't stay out very long without being in serious trouble. I guess they made up their own mind that's where they want to be, so they're there.

- Sharp: That recidivist element--is that a very important trend that you see quite a bit of, that would see people coming back again through perhaps?
- Wollenberg: You do see it in the case where they really get up into a point where there's serious crime. You can usually trace back a crime to any trouble with the law in the period prior--maybe minor things. A propensity for violence--use of guns and those things--usually show up pretty early, as against just a little sneak thief.
- Sharp: Tell me some more about these other cases, and that will provoke other questions about sentencing, I think.
- Wollenberg: There's a case here of a lady who was receiving stolen property [case C]. She had connections previously with people who were prosecuted and convicted of receiving stolen property. She took the results of a jewelry robbery, and attempted to sell it and dispose of it here in San Francisco through an intermediary that she knew. She had been pretty good for quite a long time, but here she was again. So I sentenced her to the penitentiary.

There's a case here of a young girl [case E] who imported a quantity of heroin when she went over to the Orient and came back. In customs they found in her body a big bag of heroin. She had not been involved in anything of this kind before, except at one time I think she was connected with some marijuana down in Los Angeles. A local charge of some kind. But that was all.

She was interested in the dance. I remember she said she was studying in Bangkok, studying their dance. I gave her a penitentiary sentence. She was not helpful in any way as to who her associates were who supplied her with the materials. So she did jail time.

The lady who had possession and passing of counterfeit bills [case F], went along with a fellow who had the bills and would go into the store and pass \$20 bills. On the second or third time, caught her. She had been connected with it. She was a woman who lived down in the Tenderloin down here in San Francisco for many years. She was well-known in the Tenderloin. That's just the type of case that's involved here.

The tax case at the end [case H] was a lawyer who failed to file his returns knowing he was doing it. His excuse was at that time--it was during the Vietnam war--that the tax money would be spent in the Vietnam war. It wasn't a question of paying taxes; it was just failure to file. He had failed for several years. He was sentenced. It was not a long sentence; it was short. But, he did his time.

Wollenberg: That's all we took. We didn't select these. I didn't know what cases Laurel had put on here. They are cases of sentencing, that is, in which time was done, rather than granting probation.

Sharp: These are all fairly recent cases?

Wollenberg: Well, I noticed one we just had a minute or two ago was back as long ago as '74. Some of them are fairly recent.

Working with the Probation Department: Increased Professionalization the Key

Sharp: How do you work with the Probation Department on cases such as these?

Wollenberg: Well, they're assigned by the office there. We make the reference to the Probation Department for a report on a plea of guilty or a finding of guilty, and fix a date for sentencing. They assign an agent to the case. He files a report. And, these are these general reports here.

Sharp: What's in the report?

Wollenberg: There's a standard set by the Probation Committee that published a paper on what should be in the report--so they're all uniform. They have a face sheet with the certain statistical information that is there. They start out with a statement of the offense, the official version, and the defendant's version each set out. Then, there's a section here going over the prior record, both as a juvenile and as an adult. There's a family history record--that includes statement of all the members of the family, who they are, and what they do. There's a section given over the marital history, if there is any. There's a section on his home and neighborhood, with a description of his home and his neighborhood he lives in, his reputation in the neighborhood and the community and people who know him. There is a general statement, of course, about him, his education, religion, interest in leisure activities, a section on health, physical, mental, and emotional. A section on employment, military service, if there's been any. And, a section on his financial condition, what his assets are, and what he has done in work. Of course, I'm looking generally at a tax case, so financial condition is rather important, and there's a good deal here on it. Not always that, of course. Sometimes there's nothing to be said on it.

Wollenberg: Then the agent gives an evaluative summary of what he thinks it's all about. A copy of how he evaluates the probation report, and how he evaluates the case are submitted to the judge.

Sharp: How did this sort of form develop, with all this information?

Wollenberg: Well, there were committees working on it in the national conference--the Probation Committee [of the Judicial Conference]. We had on the committee a subcommittee working with experts in the field, people who knew what the essential things are, what should be developed.

We try to have the agent verify, not just to have him interview and take the statement. He goes out and verifies all of these things.

Sharp: How long have you been using this sort of form?

Wollenberg: Oh, this form has been in use, I'd say, over twenty years now, and it has been amended a couple of times.

We've been trying to teach agents to not get too detailed and too much. Sometimes it can be too long, and a bother to the judge. But, they're pretty good now; they do a pretty good job with it.

Sharp: Does the agent involved, then, come and sit and talk with you about the form after you've read it?

Wollenberg: Yes, sure. That depends on the judge. My practice is to have the agent come in, spend ten or fifteen minutes to discuss questions I may have, or something he may want to tell me and elaborate on that he didn't feel he wanted to put in writing, or something of that kind.

Sharp: The completion of this form by the agent, is that one of the main activities of the department in connection with you?

Wollenberg: Pre-sentence reports are one of the main duties and one of the most time-consuming, I guess, things they do. But, they also supervise--the man who does this report, then, if the person is given probation, he supervises that person during that period.

The judge may provide that we want him to see him once a week or twice a month or something like that. Or lots of cases don't even require any, just an occasional report. It's up to him to be in touch. The judge, in his discretion, can say, "Look, I want you to see this man every day somewhere along the line." Those things can be worked out.

Sharp: All of those variables--how often you want the agent to see the offender--that changes because of your concern just about the offender?

Wollenberg: Yes. It would vary.

Sharp: The U.S. attorney's office prosecutes these cases, is that correct?

Wollenberg: Yes.

Sharp: Tell me a bit about advocacy by the U.S. attorney's office in these sorts of cases.

Wollenberg: The U.S. attorney gets the report, usually, I guess the way the thing operates, from the agency of the government that is concerned with the investigation of the crime. Like the FBI, or the Secret Service, or something of that kind. Their people come in and ask for warrants, and get a warrant. An arrest warrant is authorized by the U.S. attorney and obtained, and the man brought in.

Reports are made to the U.S. attorney as to the nature of case. This is internal workings of their office. I don't know anything about them.

Sharp: We've talked before about civil cases that go on and on and on for years. Do criminal cases also go on?

Wollenberg: They can, like that Hell's Angels thing that's gone on now for Lord knows how long.

[end tape 15, side 1; begin tape 15, side 2]

Sharp: You told me a bit about the steps that the Probation Department goes through in helping you prepare your sentencing. I wondered how different these procedures were, say, twenty years ago from the way they are with any of these cases?

Wollenberg: The main difference is that twenty years ago we didn't have the resources to get the information. The department was not sufficiently manned so that the staff agents were carrying, some of them, outrageously high caseloads, attempting to keep in touch with too many people that they had to handle and things of that kind. There has been a great development since then.

Besides a development in techniques and so on, the educational process has gone a long way. Most universities and colleges have course in crime and criminology. People who might want to become

Wollenberg: probations officers or something of that kind would be involved in it and take these courses, become more adept and more able and efficient in their work. There has been a great deal of change over the years.

Sharp: And it's been in the area just called professionalization?

Wollenberg: Yes. It's much more professional now than it had been in the past. There were excellent officers in the past--lots of them would just run on instinct and somehow or other you wondered how they were so good. But they were.

Sharp: Do you have any sense of what the objectives of the Probation Department are in these kinds of cases? Is that something that is clear to you at all?

Wollenberg: Let's say you're going to start out now and investigate a case. There are two philosophies. You can start out and say, "Well, he's going to have to prove to me that he shouldn't go to jail." [This means] I start out with the theory that all these people ought to go to jail, and now I'm going to find out whether he should be sentenced to the penitentiary or not. The proof is on him to satisfy me that he's going to make good outside, if he doesn't go in.

The other way is to start out with the theory that penitentiary, jail, sentencing of that kind, should be the last resort, and let's see how terrible this person really is. It's up to me to find that he's a terrible person before I'm going to send him to prison.

These two theories do appear. That's the crude way of putting it. I started out codifying all the criminal laws, and Congress did. A committee was appointed. I guess during the Lyndon Johnson administration, a commission to study them, in which [Edmund G.] Brown, Sr., our former governor, was chairman of this thing for a while. They made a declaration to the effect that in sentencing sections that the court should bear in mind that probation is the ideal thing, and they recommended the theory that you had to look to find out why you shouldn't give probation.

That changed. A bill eventually went in from Senator Kennedy, Ted Tenny had a bill with that theory in it. Another bill came along a little later actually that didn't do much different, except declarations of how you should approach the subject. The second was the other way around.

Sharp: So we really go back and forth on it.

Wollenberg: Back and forth. But actually, it's sort of a theoretical thing. I don't see how you'll ever compose it. It depends on the individual, on the judge, or on the probation officer, his general philosophy on the matter.

Sharp: When we talked last time, when we just introduced the idea of sentencing, you said that some judges approach sentencing, "How long can I keep this guy in?" Other judges, "Do I have to send this guy up at all?" So that same philosophy is everywhere?

Wollenberg: That's the same thing I'm talking about, and it's everywhere. That's why you get discrepancies. You hear a good deal about people being in the same penitentiary, maybe even cellmates, for the same offense. One's got a terrible long sentence, and one a very light sentence, and it's hard to figure out. But, number one, those two men are different, to begin with, regardless of what they may think. To them, it may look like a great injustice has been done, that someone has got a lot of good luck, or something of that kind, and didn't get much.

But, those two men are different. Certainly the judge that passed sentence was different. Certainly the agent who made the investigations were different, and their philosophies were somewhat different.

That's the purpose, and that's the real solid reason, for maintaining Parole Boards. So that later these things can be adjusted by adjusting the parole periods, and the period in which the man can get out. That's their purpose, and that's what they work at. I think they do a pretty good job in the federal system right now. I think we've had a good [U.S.] Parole Board in the last four years under Carter. I think the prior Parole Boards were subject to a good deal of criticism. But this one has tried hard, and I think it's done a better job.

Sharp: Before the Carter administration, were the Parole Boards too inflexible, or inconsistent?

Wollenberg: No, they worked at it. They were conscientious in the thing. But, I think they were the old professional, to a large extent, rather than younger people on the present board. I don't think they've been guilty of turning people out, just turning them out in the sense of just unloading them. I don't think they did that.

Sharp: But in terms of the Probation Department, and then the Parole Board, you're speaking about just real changes for the better, just over the past?

Wollenberg: I think there have been some changes for the better. They've been maybe tougher in a lot of situations, too. It's not just a question of turning them out. They haven't been turning them out; they've been keeping them longer.

Sharp: How do you think your ideas about sentencing have changed, say, in the past twenty years?

Wollenberg: I think that mainly they've changed in that I don't think I'd be as heavy-handed. I don't think I've changed much more in what I'd give probation to as against not giving probation or something of that kind. I mean when it comes to the years of a sentence, I don't think I'd be as heavy. You get kind of mellow maybe.

Sharp: What's an imagined case where you would automatically give probation?

Wollenberg: Well, a first offender where no violence was involved. There was no real violence, no threat to human life or safety or anything of that kind, and it was someone who would have a chance of getting a job. I think there should be some employment. You can't just dump him out on the street.

Probation officers are good officers--it's a remarkable thing. As tough as times are, and as hard as people get, somehow or other they go out and get people jobs. They know where to go.

Sharp: That's an important part?

Wollenberg: [The probation officers] know employers, and they know who, and they work through labor unions. They go out and get jobs for people. That's one of the most important things.

Sharp: Really as the offender's advocate in the outside world to help him recover from this experience with the law?

Wollenberg: Yes. [The offender] has to be working, and he has to be able to at least know he can support himself, and his dependents, if he has any. [The offenders are] pretty good at it if the [officers] get them jobs.

Change their environment. They've got to turn them around in lots of things they do: get them new friends, get them away from some of their old associates, and things of that kind.

Sharp: That's a lot of contact, then.

Wollenberg: Yes. That's why we need numbers [of probation officers.] That's why we had to have them. It's a lot of work.

- Sharp: When I asked you about this imagined case for probation, the first thing you said was "first offender." The second thing, I think, was "no violence in the case." Those are two really essential reasons, then, for--shifting it around to the other way--for going ahead and sentencing someone and sending them to the penitentiary?
- Wollenberg: Yes, sure. If the fellow has got a record, and is repeating, repeating, repeating, and if the fellow was using a gun, or if he was slugging somebody and has had a few scrapes in which he has done physical violence to other people, those things are [important].
- Sharp: Did you do much sentencing when you were a superior court judge?
- Wollenberg: Yes, after a while I was at the Hall of Justice in the criminal division doing altogether criminal work.
- Sharp: How different is that from federal court--?
- Wollenberg: Well, in the state court at that time we had the indeterminant sentence laws. You were sentenced to the custody of the attorney general in accordance with the law. That was it.
- Sharp: And then who actually decides how long a person--?
- Wollenberg: Parole board at that time.
- Sharp: So it's totally different.
- Wollenberg: In the federal system, the judge is responsible for the actual time. He says, "Two years"; he says, "Five years"; he says, "Ten years"; he says, "Twenty years," whatever he says. However, they're still subject to good time, and the Parole Board has jurisdiction to adjust those sentences by the grant of parole.
- Sharp: We talked about how the Probation Department has gotten bigger, and more professional. I wondered what sort of issues the department has really had to face in the past twenty years, besides its just needing more staff? What other sorts of issues?
- Wollenberg: Well, there are always new and different assignments that are given to us like bail investigations, and working with the United States attorney's office on so-called deferred prosecution cases. Generally matters of that nature.

As a result, they have taken over certain of the administration of follow-up treatment for parolees and things of that kind, that had been previously done by the Bureau of Prisons. There's a

Wollenberg: method of contracting out for services now. We can contract with private organizations for psychiatric service, and drug related matters.

Sharp: Has the department always had enough money to do all these things?

Wollenberg: No. Lately the Congress has been very good with the budget back over a number of years, and has allowed them to pay for more services.

Sharp: What's there the least amount of money available for--certain things the department wanted to do, but could never get?

Wollenberg: I don't think we ever had much of a problem in that regard, in the last five to ten years. We've appeared before congressional committees--we didn't go too often. We didn't have too much we were asking for, and we had it well-documented. The things we wanted, we got.

We had good support with judges generally around the country with Congress. Congress as a general rule was very generous to us.

Sharp: I know that the School of Criminology that used to exist at the University of California had some input into the Probation Department. I wondered what that was all about?

Wollenberg: We got money from the Ford Foundation, I think, originally. The San Francisco office of the federal probation service, when Albert Wahl was the chief, working with the university, put on what they called the San Francisco Project. We had about six or eight students from the university who were assigned to the Probation office to work the probation offices in connection with this study. It was all finished up pretty well. They got the money to finally do it, except the university just went crazy with overhead. We turned it down, the contract that they submitted, where they were getting up to 50 percent for overhead.

Sharp: Of the grant?

Wollenberg: Out of the grants. We said we wouldn't sign those papers to Ford. Ford wouldn't accept them; Ford said they were finished with the University of California, and did quit without a grant.

So it came right up to the point where all that was left undone was really a small grant to finish up with evaluating all the work that had been done, some final evaluation work to be done. It never was done. But, the other work has all been available, and was useful.

Sharp: Do you have any sense of what the lasting impact of the study was on the department?

Wollenberg: I think it had an impact in that it pointed up the need of general working of statistics and information, and getting it all together in some simple, organized manner. Development of computers was coming along then, so it was able to be done. We think now we're going to have a good system finally.

It's awfully hard to follow up, and to get information. You take people, and it's confidential, or they go out of the system. They get parole; they go out to finish their parole; or, they finish their probation and have no problems. How long do they stay clean after that? This is always the question.

And, we're only talking about those that are caught. When you look at the percentage in this country, I mean, the amount of crime and how many are arrested, it's just horrible. It's a drop in the bucket that get into court, as compared with crime.

So, a lot of statistics are not good; they are not very reliable. Nobody's are. You know how many arrests are made, but that doesn't help.

On Sentencing: Philosophy and Tools

Sharp: What personal values of your own are important in sentencing, do you think?

Wollenberg: I think that each judge has certain personal values, certainly. They all arise out of your general experience, your general feeling, what you appreciate as to the [offenders] as individuals.

One of the big problems for a judge to handle is the difference between the so-called blue-collar and white-collar crime, for example. You do draw a difference for that. Is the banker who just embezzles a few million dollars ever going to do it again? As against the blue-collar guy who steals in a different way. Judges have problems, and that's part of it. I've never really had a problem on that. If you're not going to sentence the fellow who really takes the big money, the so-called white-collar guy, I don't know how you can do it to the other fellow. You've got to sort of equal it out. I don't think there's so damn much difference between them.

It's true--it makes a difference--when I said you look to see if [the person is a] first offender--most of the white-collar people are first offenders, and most of them you can be sure are not going to do it again. They're not going to get the

Wollenberg: chance, for instance. Their job was as a cashier somewhere, and they can't get bonded anymore. They're never going to get a position where there's going to be money laying around to take. No bank is going to have them again--as an officer or even an employee of the bank.

Sharp: And that is punishment enough?

Wollenberg: No, I don't think so. I think they have to face up to what they've done in the full sense of the word.

Sharp: Are you aware of having your own sentencing philosophy other than the kinds of ingredients that we've talked about?

Wollenberg: I don't think so. Well, to some extent you realize maybe what you're doing is different from what the other person is doing, and that it's based on some philosophy that you really adopted without realizing it, perhaps, over the years, from your experience. Sure.

Sharp: What sort of words come to mind to describe it?

Wollenberg: Well, I suppose you'd say you try to weigh the interest--to attempt to find where the balance is between general society's interest and what you can do for the individual, if there's anything that can be done.

You've asked about the difference in sentencing over the years, too. Today we have so many different, I think, tools we can use. There are organizations interested in taking over and working with people who need help in this field, and that never existed before, twenty years ago.

With the state court, the Salvation Army used to have a staff of people working in the jail. They'd come and talk to you: "Please let us take this person out. He's going to be good now. We'll put him to work; he's going to work for the Army."

They'd get jobs. [The Salvation Army was] very successful with people. I didn't give them everybody they asked for, but I would give them some. Some guy with alcoholism or something like that, they'd say, "Look, we've got a program, and it's the only one. We think it's going pretty well, and he's consented to come into it. Let us try him." I'd let them try him. If it was the booze that got him in for shoplifting or something like that, why, I'd give them a chance.

Sharp: Are there as many organizations to help people who are convicted in local courts as there are people who are convicted in federal court?

Wollenberg: Oh, yes. I think so. We've got organizations who are just interested in county jail cases, things of that kind.

There's a danger. You've got to watch them, some of them. You've got a lot of crackpot things that are borderline religious or not religious, I don't know. After that People's Temple business and all of that--the people who were really [in leadership] in there, many of them had criminal records.* It's a hard thing to get the answers on.

Sharp: Do people perceive you as having a sentencing philosophy, do you think?

Wollenberg: Golly, I don't know. I don't think they give much thought to it. The only people who are interested at the moment when it's going on is the defendants and their people, whether they're going to get away with it. They think, "Gee whiz, what's going to happen?" He's a tough judge, or he isn't a tough judge. If that's philosophy, then they perceive it, "Yes, he's a tough guy," or "He's not a tough guy."

Sharp: Do you have a sense that they perceive you as an easy guy, or as a tough one?

Wollenberg: I don't know. I don't think they consider me as particularly--they can consider me as tough in some situations, and maybe I've been easy in others. Sure I have been.

Sharp: Does a lot of your feeling about sentencing, that when a person comes before you to be sentenced there are all these things that you must take into account, records, and so on, become reinforced by your being a trial judge?

Wollenberg: Oh, I think so. That's part of what I mean about--it depends on your experiences in life. That's part of it.

Sharp: You know, you've spoken mostly using the masculine gender. I wondered if you were aware of so many more men coming before you as opposed to women? There were a few women in these cases.

*On 18 November 1978, hundreds of Americans committed suicide at Jonestown, the People's Temple colony in Guyana.

Wollenberg: Yes, there are quite a few in these. But we've had more women, you know, I mean, in the last years. There has been an increase in women in the courts. There's also, I think, been an increase in the sentencing, and the time given women in the courts.

There was a time when, well, if it was a woman, she was pretty near a cinch to get probation, unless she committed a murder or something. Then it was a short term. That's the past, I think.

Sharp: Do you have any sense of why there are more women coming before you now than there were ten years ago?

Wollenberg: I think the women have succeeded in making themselves--they want equality, they're getting it. I think there was a gallant sort of a feeling. If a woman shot her husband, well, the son of a gun may have deserved it. Now, it's no different than if he shot her, or she shot him.

Sharp: I have a few questions just about general patterns of sentencing. I'm not sure that you can answer these or not. Is there some sort of a pattern for sentencing in these kinds of cases within the Northern District Court itself?

Wollenberg: I think there's a difference in what judges will do. There is some pattern, yes. There's been a pattern over the last few years of getting tougher, I think, in the sentencing field. I don't mean by that that they're giving more years to people in sentencing, but sentencing more, to some extent.

Although the percentage, statistically, of probation stays about the same. It's about 60 to 70 percent of the cases. Around 50 percent are quite successful and are not repeaters. We do get some maybe 40 percent repeating, that come back.

Sharp: I had a few questions about the records of these cases. I wondered, of any given case, say for one of these, what are the records that exist?

Wollenberg: Well, there's the charge, the result, the plea, the trial record is all kept, a transcript of what has occurred, if it's a trial.

Sharp: And then the probation report?

Wollenberg: The probation report is confidential. That's not open to the public, except on approval of a judge, who may approve it if he finds that it's purposeful--in the interest of justice, or something like that.

Sharp: Have the probation reports always been private?

Wollenberg: Yes. They're confidential.

Sharp: And the main reason is just that--?

Wollenberg: Even until fairly recent years, [the report was kept] even from the defendant himself. The main reason being that--for instance--a probation officer may go and talk to a wife. She may give him very valuable inside information, and she may say once she starts, "You know, if my husband knew I'm talking to you and telling you these things, it would be the end of our relationship," or "What he'd do to me, I don't know!" So that's a confidential thing. At her discretion, she decided to tell the agent. It was valuable for the agent to have it. Yet he shouldn't indicate that he has it altogether, or let the defendant know that his wife told him. Or a brother, or a mother or father, or anybody in the family. There are all sorts of situations. A business partner talking about the partner, and so on.

Things like that, I think, have to be kept confidential, if you're going to get the information and make any decent use of it, for any purpose. But he's giving it to someone. If he doesn't dare use it, and if it's properly used, and valuable to use, but he can't use it because it's going to spoil some family situation or something of that kind.

Sharp: You mentioned that up until recently, these were confidential.

Wollenberg: Now, certain portions of that nature may be deleted, not put in the report. And it would be shown the defendant. The defendant now has the right to see the report. But the agent has the right to keep out, with the judge's approval, certain confidential things if he wants to.

Sharp: I had heard mention of the sentencing institutes that you have been involved in, mainly as part of your probation activities in San Francisco. I wondered if you could tell me just a bit about these institutes--what they are, who they're for.

Wollenberg: Well, for the judges, sentencing judges. We had one in Oakland at the Hyatt House last month, early in November [1980]. I guess there were about 150 judges.

Sharp: Federal judges?

Wollenberg: Yes. All from the Ninth Circuit and the Seventh Circuit, which is Chicago. They came out.

They discussed sentencing, just the things you and I have been discussing here. Philosophy, tools, what have you got to use, what the law provides in certain situations.

- Wollenberg: And, the whole picture of prisons. We try to have judges, as much as possible, visit as many institutions as they can. At this meeting, we spent a day at Pleasanton, the judges did, breaking up in groups and going through, talking to prisoners and talking to staff, and seeing what the living conditions are like. They have usually a meal while they're there, they had lunch. They eat with the prisoners--get in a line with trays, like everybody does. Split up around the dining room, sit at a table with two or three prisoners and one or two judges, and talk.
- Sharp: What's the main objective, then, of the two or three days, or whatever it is, that you're all gathered together?
- Wollenberg: General discussion of sentencing philosophy.
- Sharp: It's to get a sense of what--
- Wollenberg: What's going on, and what is bringing results, and not bringing results. And work of the Parole Board--the Parole Board is there, their people are there. In fact, the whole Parole Board attended this one. The people from the Bureau of Prisons are there, counselors, and so on.
- Sharp: Is the Ninth Circuit seen as somewhat of a leader in probation?
- Wollenberg: I don't think so. The statistics are around--we've got them available--I think they're pretty well evenly divided throughout the country generally. There are some differences, discrepancies, sure, but they're not very great.
- Sharp: In our last interview, when we talked just a bit about the two schools of thought regarding sentencing, you mentioned that you were against mandatory sentencing. You didn't really give me too much more than that basic statement.
- Wollenberg: I don't think you should take away from the judge's discretion. When I say mandatory, I don't know whether I'd feel that way where a gun was involved. Sometimes it may be good to have a strict law that a crime with a handgun or any other kind of a gun is going to mean prison.
- [end tape 15, side 2; begin tape 16, side 1]
- Sharp: What sorts of exceptions do you think there should be?
- Wollenberg: It's hard to tell. It would have to be an unusual case. There are those cases, sometimes that come up that you feel there shouldn't be prison for some reason or other. They're very unusual. It's hard to put your finger on what would be, but it's conceivable that something might turn up of that nature.

Sharp: I guess a lot of us have thought quite a bit about gun control and violent crime with guns just since last week, because of John Lennon's murder.*

Wollenberg: Yes, sure!

Sharp: And it's such an awful thing. I mean, it is a real assassination. You sort of wonder a lot about retribution, and there isn't any. You know he is gone, and there isn't anything that anybody can do about it.

Is that something that you think about, in sentencing, the retribution element?

Wollenberg: Sure! You're bound to. Don't you think that anybody who contemplates a violent crime, or any crime of any kind--when you get caught, you're going to pay for it. That's retribution. They should expect to pay for what they're going to pay for. That they should be shocked, and say "It's terrible to go to prison," all of this business, that's a lot of baloney. They knew when they were doing it, I don't care what the situation is, that they're going to pay something somewhere along the line.

Sharp: Do you have strong feelings about the use of psychiatric examinations and psychiatric findings about individuals who commit violent crimes? The whole role of the psychiatric examination?

Wollenberg: I don't think we've proven any of it up yet. I don't think the science has reached any point where we have any reasonable basis. These people are just as dangerous to society, maybe more so, if they're just wild nuts.

Take this last thing, the Lennon matter. I mean, this guy is dangerous--how can anyone say he'd never do it again to one of the other Beatles, or anybody else? You've got a very, very hard and tough situation, but I think if [the defendant is] competent to know the difference between right and wrong in what he is doing...

The old McNaughton rule, as tough as it is, it's pretty hard to find anything to substitute for it in our present-day society that will control anything.

*John Lennon was murdered in New York City on 8 December 1980.

Sharp: What rule was that?

Wollenberg: McNaughton. The McNaughton case came out of England. It's the test of sanity. That is, that the person knows what he is doing, he knows the difference between right and wrong. That's the main test.

They add to that now in California with the rule that you must also be able to control what you're doing as well. That gets the psychiatrist into that deeply.

Sharp: What is the role of a psychiatrist, then, in the preparation of the probation report?

Wollenberg: We have the right, of we wish, to refer them--the Probation Department can--for a psychiatric examination to determine their general mental health.

Sharp: That all then feeds into the report given to you?

Wollenberg: The psychiatrists go over [the offenders] when they get into the prison anyway, if they go to prison.

Welfare Rights and Reform: Adjudication of AFDC Cases and the Medi-Cal Co-payment Experiment, and General Comments

Sharp: I thought we would now move on to the issues of welfare rights and welfare reform. These issues have been very important in the federal government and the state government since the sixties, at least. As a federal judge, you've been involved in a lot of cases, I imagine, dealing with welfare rights, if not actually reform, as well.

I thought I would ask you first about this 1967 enjoining of a cut in AFDC [Aid to Families with Dependent Children] payments. You should have a copy of this article.*

Wollenberg: Yes, I have one. This article concerns cases where checks are issued by mistake and so on, where the welfare recipient has nothing whatsoever to do with the creation of the mistake. Then they [the State Department of Social Welfare] wanted to collect the money back by just cutting off payments, so she'd get nothing.

*See San Francisco Examiner for 14 December 1967, for an article by Tom Hall, "Judge Halts Cut in Welfare Over Mistake Checks."

- Wollenberg: Let's say they paid her \$1000 more than they should have paid her, and she really didn't know--she couldn't compute it, or she hadn't computed it. There are lots of those cases. So the department cut them off for six months to a year until they caught up again, and things like that. That's how they offered to do it. I said no. This is all in the Reagan time.
- Sharp: I wondered, first of all, why you had jurisdiction in this matter?
- Wollenberg: Well, it was government money. They're administering it, but it's mostly government money.
- Sharp: Even though it's dealing with a state law?
- Wollenberg: Yes, because it was a combination of monies. Some programs were just federal money. The state set up [the program] in accordance with the government's standards and was administering it.
- Sharp: These reductions--were they an attempt by Governor Reagan to cut AFDC and welfare costs in California?
- Wollenberg: Yes, on the basis that people had been overpaid, and this was how he was going to get the money back.
- Sharp: Later in this article, I see you issued a temporary restraining order, halting the practice until a three-judge federal panel--
- Wollenberg: Yes--could be convened to hear. There were some constitutional questions raised by the state.
- Sharp: So all you were doing was just stopping the practice until it could be looked at?
- Wollenberg: Saying they had to keep paying her [Mrs. Mable Stallworth] what she was entitled to, anyway, and not just hold out money from her.
- Sharp: And there were many of these injunctions?
- Wollenberg: Oh, yes. I think so. My recollection is. I can't tell you now, but this was not unusual.
- Sharp: The case that I wanted to talk about as far as welfare rights was concerned--the first one, anyway--is the Kaiser v. Montgomery.* That was 1969.

*319 F. Supp. 329. This judgment was vacated 20 April 1970. See 90 S. Ct. 1349.

- Sharp: This, if I understood it right, was a class action suit involving some AFDC clients who were challenging a certain section [Section 1145 (a)] of the California Welfare and Institutions Code. The section that they were challenging was one that said that flat limitations on AFDC payments were okay. It seems like much of your decision sets out, in a lot of different ways, why it couldn't possibly be all right, that flat limitations couldn't possibly be all right.
- Wollenberg: Yes. Of course, each child is entitled to so much. The department had a schedule, a budget, for a family of x number, and the budget units--they had it on a unitary basis. They published budgets which were approved budgets. Then they started cutting it at the end.
- It might be reasonable, when you ran into as many as fifteen children--I notice in the footnote it's set out.* To start cutting down, sure, on the number, because they have a lot of little ones. You don't have to allocate to each one. But to say \$6 for each additional child on a flat basis is [adequate]--that's what we were talking about.
- Sharp: What was important about this case, do you think?
- Wollenberg: General equal protection clause--any constitutional issue becomes an important issue. It was important because it was denying some type of aid to families that the law had said they were entitled to. It was discriminatory.
- Sharp: Was this another part of the welfare reform that was going on in California, do you think?
- Wollenberg: Yes, I don't think it was important in that I don't think involved a tremendous amount of money. It may have, but in the welfare field, you don't think of it as much. All of a sudden, when you take a caseload, it's tremendous. But I don't know; I guess I knew something about it at the time, but I don't now.
- Sharp: Judge Oscar Hamlin's dissent is pretty opaque; it doesn't really shed much light on why he disagreed with you and Judge Alfonzo Zirpoli.
- Wollenberg: Yes, that's right.
- Sharp: I wondered if you could say something about how he looked at the constitutionality of the flat limitations statute.

*See footnote 3, p. 331

- Wollenberg: I don't think he gave any consideration to it. He said there's no absolute limitation in the statute, because it still provides so much for an increase in the number of dependent children as it goes along. He felt that was sufficient. That's what he says.
- Sharp: How did you and Judge Zirpoli come to your decisions that it wasn't all right?
- Wollenberg: We tried to say so in here; we took many pages to say it.
- Sharp: It was a pretty strong decision.
- Wollenberg: We took up each possible argument that was offered, and attempted to discuss it. There were these various discrepancies. We set forth the various cases, that is, took a few sample cases here, and set them forth.
- Sharp: You did use them from a variety of courts, too--from the U.S. Supreme Court as well as a couple of circuit courts. You used a lot to strengthen your position, I guess.
- Wollenberg: Yes. There has to be some basis or relationship of some kind between the basic need of the family, and the statute itself. That's what they're attempting to do. Congress attempted to by appropriating the money, and the state legislature in connection with its act, is required by Congress. That's what we tried to do.
- Sharp: So what you're criticizing here is the state's changing what Congress intended.
- Wollenberg: Yes, doing something that Congress did not intend to do, as shown by legislation, and cases, and so on.
- Sharp: Were there many other cases challenging this particular section?
- Wollenberg: I don't think so. I think this was the case in California. It just concerned California. We're talking about a California Welfare Institution Code section.
- Sharp: Do you recall during those first few years that Ronald Reagan was governor--after 1966--that there were many more cases coming into your court involving welfare?
- Wollenberg: Oh, yes. Sure, there was a whole string of them at this time.
- Sharp: And mostly challenges to changes in state code?

- Wollenberg: Changes in the state code, yes. Or, challenges to regulations promulgated by the Department of Social Welfare.
- Sharp: The group that brought this case, the San Francisco Neighborhoods Legal Assistance Foundation, were funded by OEO [Office of Economic Opportunity]. They were a pretty well-known group in San Francisco in the area of welfare rights. Did a lot of other cases come to you, brought by them?
- Wollenberg: Not a lot. There were some others.
- Sharp: Tell me how you saw them as a group in these kinds of cases.
- Wollenberg: Well, they were right up, just as in this case. They were very vigilant in watching what they considered to be the constitutional rights of the people they were interested in at the time, the people on assistance. There were several suits, eventually, that came.
- The person that I saw the most of was Cherie Gaines.
- Sharp: She was an attorney?
- Wollenberg: Yes. She was an attorney. Her name is the second name here. She was on the faculty at Boalt Hall for a while.
- Sharp: They were the chief legal office, I guess, for the California Welfare Rights Organization, at least in the early seventies.*
- Wollenberg: Yes, I think so.
- Sharp: I wondered if you had many impressions of the California Welfare Rights Organization.
- Wollenberg: They did a thorough job in these cases that we had from them. I can say the same thing on behalf of the attorney general of the state--Thomas Lynch was attorney general at the time--and Elizabeth Palmer, I don't know if you know her.
- Sharp: Yes, I know the name.
- Wollenberg: Elizabeth handled these cases, and she was right up on this law. She was very good. They worked well together, the two sides, and conceded factual things. There was no out and out--arriving

*See an article in the San Francisco Chronicle, 7 August 1972, by Michael Harris, "Welfare Rights--a Different Crusade," p. 10.

- Wollenberg: at a point where you didn't get into the merits of the case, but it became name-calling--they were never like that. Didn't have to have a lot of hearings; stipulated as to what actually was going on. Elizabeth Palmer always did a very good job in that regard; so did Cherie Gaines.
- Sharp: I see that this decision was vacated in 1970 at the California Supreme Court level.
- Wollenberg: They couldn't vacate it. The Supreme Court of California? It may have been an amendment by the legislature or something--they may have vacated the restraining order.
- Sharp: Yes. Is that what happened?
- Wollenberg: That wouldn't be in this report. Apparently it was vacated as a result of ultimate determination.
- Sharp: So who would have vacated it?
- Wollenberg: It would either have to be done by a federal court, to vacate the restraining order here. But if the Supreme Court of California found a California law--whatever they found it to be at that time when they did it three years later--it may have been by a change in the statute, a legislation or something of that kind.
- Sharp: That's all the questions that I had on that case.
[end tape 16, side 1; begin tape 16, side 2]
- Sharp: In 1971, there was an article in the San Francisco Chronicle halting reductions or terminations in payments to AFDC claims in California.* These payments were being reduced because of the new California law, passed in 1971, as a compromise law between Governor Reagan and the Democratic legislature. I think this was Reagan's big welfare reform act that was passed in his second administration.

First of all, why were both you and the California Supreme Court involved in this?

*See San Francisco Chronicle for 30 September 1971, "Court Delays New Welfare Reforms." As this article stated, "Welfare benefits were to be increased to two-thirds of the AFDC recipients and reduced or eliminated entirely for the other one-third." Governor Reagan signed the Welfare Reform Act on 13 August 1971. There were many state and federal court challenges to this act. See California Journal, October 1971, p. 270, for additional information.

Wollenberg: It says here [reading from article], "The state supreme court has ordered the Reagan administration to delay schedule implementation of a major portion of the welfare reform act." "The ruling followed by one day an order" by me,--

Sharp: Halting reductions?

Wollenberg: [continues reading] "Halting reductions or terminations in payments to any of the 800,000 recipients." They were going to, somehow or other, cut 300,000 off the rolls--that is, one third of the rolls.

I said you can't just do it arbitrarily by legislation. You've got to go through those files and see that you're not cutting off people who are entitled to it.

The reason that both courts are involved is that each had jurisdiction. It's a concurrent jurisdiction over the issue.

Sharp: But all you were doing was saying you can't do that until you take a look at it.

Wollenberg: The state has to meet a recipient's minimum needs, I said. You don't know what you're doing when you just say, one-third of these people go off.

Sharp: Could you summarize from this article, and from the one that I showed you before, and then the case before, how you generally handle welfare reduction cases?

Wollenberg: As I said before in connection with the first case, the Kaiser case, the state had set a budget for minimum needs. The state had set a budget, and had said how much was needed. The state has the right; it can set minimum needs. It had set a rather liberal [amount], I guess--that was the claim. The state could, if it wished, reduce that budget. It never did reduce the budget; it just said, "We're not going to pay one-third of the people on the rolls; they've got to go off the rolls." They didn't say it was going to change minimum needs.

I said you can't throw one-third of the people off the rolls until you determine whether or not they're entitled, what their minimum needs are. Under the law as written by the legislature, you have set what minimum needs are. The legislature set that figure; it wasn't subject to change. That was the amount necessary. The legislature said, "That's what every family is entitled to."

Wollenberg: Then [the legislature] went on and wanted to just cut it all off. But it didn't have nerve enough to face the issue, and say, "Let's cut down what they're entitled to." The legislature didn't feel it could, I guess. It therefore simply said, "If there are a hundred people on the rolls, thirty some-odd got to get off, right now."

That doesn't make sense. That's all I said. And I specifically said, according to this article we have here from the Chronicle,* that the state is not required to pay the full standard, but instead many devise maximum grant schedules setting the highest amount it will pay. If it sets that, then that's what it'll have to do.

Sharp: Was the area of welfare reductions all new to you when Governor Reagan came into office, or were there some you handled with Governor Pat Brown?

Wollenberg: No, I don't think they ever tried to reduce anything under Governor Brown. I don't recall ever having any. He was going to reduce these welfare payments, but he didn't have a program that he could get through the legislature or anybody else. So that manner in which he tried to do it was not in accordance with the law. That's all we said.

Sharp: It's interesting that the legislature would go ahead and pass the act anyway.

Wollenberg: Yes, the article says it was under the new act, worked out as a compromise between Governor Reagan and the Democratic legislature.

Sharp: We just started doing some work on the Ronald Reagan papers at the Hoover Institution to start our next project. I saw some interesting letters by Elizabeth Palmer with respect to the Beilenson bill, and some of the other welfare packages.

Wollenberg: Yes. She never was convinced that the bill was any good. She didn't say that here.

Sharp: The letter that I saw she wrote as deputy, as a very formal statement.** The attorney general's office had been asked about the legality of the act. In fact, Beilenson had asked

*San Francisco Chronicle, 30 September 1971.

**In 1972, Elizabeth Palmer was acting assistant attorney general of California. Anthony Beilenson was chairman of the Senate Committee on Health and Welfare at this time. He wrote a letter to her requesting her to investigate the legality of the 1971 Welfare Reform Act.

Sharp: them to state their opinion. Several other people, the legislative counsel's office and others, had been asked their opinions about the bill, and they had come up with different opinions. So the bill got passed anyway, and it got the legislature into trouble later, from what I gather.

California Welfare Rights Organization v. Elliot Richardson, the 1972 case, is a totally different kind of case, it seems, because of the whole co-payment experiment that was being challenged.*

Wollenberg: Yes, it is.

Sharp: And yet it has some similar elements to it.

First of all, do you know how this co-payment experiment came about?

Wollenberg: Well, I think Congress had passed an act which said that the state could experiment in making up these amounts of money. See headnote 8 involving medical service--Congress said HEW could use their [reads] "discretion in approving experimental projects with respect to state plans for providing medical services...." But they had to be subject to the approval of the secretary.

Sharp: I just wondered why California was chosen.

Wollenberg: Of course, they enacted what they thought was a scheme to do it, isn't that it?

Sharp: I wasn't sure who exactly came into that. I knew that Congress had given HEW the power to approve these projects, but I wasn't sure who exactly in California came up with it, or how it happened. That's not in here.

Wollenberg: This is California Social Security that came up with a Medi-Cal program. It was approved by Elliot Richardson. It was a pilot demonstration project.

Sharp: So California Social Security submitted it to them for approval?

Wollenberg: He had the right to approval, he said. That's what we said under this federal statute. That's the whole case, isn't it?

Sharp: Yes, that's it.

*348 F. Supp. 491 (1972).

- Sharp: Your decision laid down general guidelines for the use of this system in granting Richardson's motion for summary judgment, which, I think, is what you did.
- Wollenberg: Yes, that's what we did.
- Sharp: You said that HEW could approve this kind of project, as long as they didn't subject an unreasonably large population to it or didn't continue the experiment an unreasonably long period of time." I wonder if it was difficult for you to come to this sort of decision, or was it pretty routine?
- Wollenberg: I don't think there's anything difficult about it. We didn't want it to be existing forever, and find it to be a permanent thing just because it comes under the heading of an experimental program. That was all that that meant.
- Sharp: Why didn't you give a certain length of time, then, that it should be in existence? Like a year or so.
- Wollenberg: I guess we didn't know what it would take to really find out. That Overton Park case, as I recall it, held that there was that much control.** There's a review of the secretary's opinion and decision provided in the law. This could be done as a means of partial federal funding. This case never was appealed, was it?
- Sharp: I don't think so.
- Wollenberg: I don't think it ever went anywhere else.
- Sharp: The National Welfare Rights Organization was becoming a lot more powerful in the sixties and seventies. They disrupted meetings in San Francisco, and so on. They were involved in this case-- and I wondered if you knew anything more about them.
- Wollenberg: No, I really didn't. This is [Ralph Santiago] Abascal's case, of the Neighborhood Legal Assistance Foundation. [reads] Center on Social Welfare Policy and Law of New York City.
- Sharp: It seemed to be a pretty big network of organizations, both legal and otherwise, that were in the process of making welfare rights a pretty important issue in the sixties and seventies. This case and the others.

*348 F. Supp. at p. 498.

**Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 91 S. Ct. 814, 28 L. Ed. 2d. 136 (1971).

- Sharp: I had some general questions, just about welfare rights, that deal with more attitudes and feelings. I wondered if you came from all the cases that you heard to have a general attitude about welfare rights.
- Wollenberg: No, I had the general attitude that they were rights that had accrued, that existed in people, and couldn't be taken away from them under the constitution without due process and a fair hearing. That's what we were trying to hold the department to.
- Sharp: So they had been given certain rights on the basis of statutes that had been enacted ten years before--
- Wollenberg: Unless those statutes were amended and changed, you had to stay with them.
- Sharp: Through the legislative process.
- Wollenberg: Sure.
- Sharp: Anything else was not due process.
- Wollenberg: That's right. The legislature had to do it the right way. They couldn't do it in that other way that we were talking about a few minutes ago of saying--
- Sharp: Changing the code.
- Wollenberg: Just changing the code, yes.
- Sharp: Did you have a sense of what was plausible welfare reform in California and what wasn't?
- Wollenberg: No, I don't have anything as to what could have been done, or should have been done. If that's what you're asking, I didn't have anything in mind at all.
- Sharp: Between 1971 and 1973, especially in California state courts, there were a lot of challenges to Reagan's reform of the welfare system in the form of suits and complaints. I wondered if these are pretty representative of the complaints, or there were other kinds of cases?
- Wollenberg: No, these are pretty representative.
- Sharp: From where you sat on the district court bench, can you summarize what you thought the impact of Reagan's reforms of welfare were in California?

Wollenberg: Well, I don't know. I'm unable to. I don't think he did anything through the legislature, did he? He didn't get anything through, did he? What were they? What were his reforms? What successfully did he get through the legislature?

Sharp: Well, there are lots of claims made that he got a lot of people off the welfare rolls that shouldn't have been there. And yet, you challenged a whole lot of those. So, I'm not sure what was ended up with after everything was said and done.

Wollenberg: I don't know. He may have gotten people off who didn't belong there. They may have made thorough investigations and found crooked statements, fraudulent claims, and gotten those files cleaned out. That may have been done in the proper way. He was entitled to do that.

Sharp: In your court, you stopped the state from changing the current level of AFDC clients support.

Wollenberg: No. They could have done it anytime they wanted to, if it was proper.

Sharp: I mean, you stopped the improper way of doing it.

Wollenberg: Yes, we said what they attempted to do was not proper.

Sharp: Other judges in your court--were they getting these cases, too, and deciding them differently?

Wollenberg: I don't think so. I think these cases were coming right through our court--we had most of them. They were over here.

There weren't such a great many. Wheeler was one that went up to the Supreme Court, as I recall. I think it was Wheeler--One of the early ones.

Sharp: Were there any mentions of President Richard Nixon's guaranteed income proposal? It was called the Family Assistance Program, but it was really a guaranteed income proposal.

Wollenberg: No, I don't remember any.

Sharp: I was wondering if it came up in any of the cases?

Wollenberg: I don't think so. I don't see how it would have.

Sharp: Did the politics of welfare reform somehow filter up to your court?

- Wollenberg: Well--the politics of it--I suppose all of this is politically motivated. But these are the lawsuits that came up. If they're political, they're political. But I don't think we had politics as such.
- Sharp: Did you see your court as somehow helping welfare reform to be worked out?
- Wollenberg: That wasn't our job. We were just reviewing what they had done, and just telling them whether they had done it rightly or wrongly under the law, the constitution. We pointed out in all of these cases along the line, that all the legislature had to do was set forth its standards of what a family was entitled to.
- Wollenberg: They had the right to lower those, if they wished. They had to do it across the board, with everything.
- Sharp: Your experiences with legal services' lawyers, which are what these cases are, how do they differ from cases involving private, corporate firm lawyers? Are there differences of advocacy of some sort or anything?
- Wollenberg: The only thing you might say they differ in--they feel they have matters of great public interest. But, their conduct was perfectly proper. They never argued that they were entitled to succeed because they had votes, or something of that kind.
- Sharp: That's all the questions that I had about welfare rights.

Housing Discrimination: U.S. v. Youritan, A Sample Title VIII Case

- Sharp: The next section is housing discrimination; it's fairly short. Then I have a section that is just more concluding questions about your work on the district court.

This case, U.S. v. Youritan Construction--I was really fascinated by it.*

- Wollenberg: That was quite a network down there [in Palo Alto].
- Sharp: I'm not sure which fascinated me more: the racism, or the law in the case. It was an amazing combination of all different kinds of things.

*370 F. Supp. 643 (1973).

Wollenberg: That was prosecuted by the United States.

Sharp: That's a pretty good look at the way that sort of prosecution goes on. What did you think was important about this case?

Wollenberg: Well, mainly that these people controlled a tremendous amount of apartment and living space in the Palo Alto area. The interesting thing, of course, was that the people connected with the [Business School at] the university [Stanford] had a fair housing organization; and they did the investigating, the legwork.* They got it out of the law school; they had some law students; and they had some students from the bus school who'd give time to go out and do interviews and with applications for apartments.

There was a disregard on the racial basis, for any consideration. They [Tan Construction Company] were going to do things their way, and set it up to do their way. That was it. They had closed minds as to anything otherwise.

Their lawyers didn't help them a great deal. They were the same thing. They were advising them how to get around the law, and how to beat the law, rather than how to comply with the law.

Sharp: I saw that there was a whole Housing Section of the Department of Justice in Washington, D.C. It was those people who came out to try the case?

Wollenberg: Yes. The young man who came out was a young Negro. He wasn't too experienced. Elliott McCarthy, I think his name was. He had difficulty in the beginning; but he worked out pretty well after that, because it went on a long time.

Sharp: Was housing discrimination that prevalent, that there had to be a whole section within the Justice Department?

[end tape 16, side 2; begin tape 17, side 1]

Wollenberg: It existed here in our jurisdiction. We had a lot of cases; not all good. They weren't able to prove all of them. But also private lawsuits were brought, more of those. We didn't have so many government cases. This [Tan's] was just rather a big operation, and a very flagrant one, I think.

*Another fair housing group also involved was Mid-Peninsula Citizens For Fair Housing.

- Sharp: One way that this case is really similar to the welfare rights case was the way the federal district court was used to redress a wrong. I mean, a very obvious way of having a remedy for something.
- Wollenberg: It's a statutory remedy; it was all set up by Congress.
- Sharp: Your recognition, as the court in this instance, of the subtle racist behavior on the part of the personnel of the apartment complex--is that a natural thing to come up with in this sort of a case?
- Wollenberg: If you sit and listen to all this evidence, it was all there. I mean, you hear it day after day after day, case after case. It was all quite apparent it was there.
- Sharp: Was that a typical ingredient in housing discrimination cases?
- Wollenberg: It is. Yes.
- Sharp: The provisions of the Fair Housing Act of 1968, the remedy for this sort of problem, of posting available units, that was all written up as part of this 1968 act? I wasn't clear about that.
- Wollenberg: Oh, you mean the remedies as they are set forth. Yes, that's part of the equitable relief that you can grant people.
- Sharp: Were there a lot of these Title VIII cases after 1968?
- Wollenberg: Yes, we had quite a few.
- Sharp: This is a large example.
- Wollenberg: Not a great many government cases, no. I can't think of any other, but we had a lot of private suits, individuals who had been rejected.
- Sharp: How did the government get into this case? There were charges--?
- Wollenberg: Yes, charges were brought involving Tan--from this fair rental organization. They had their letters that said something, I forget what it was. And they used to have television ads, and radio ads--
- Sharp: And you could report it?
- Wollenberg: --to report. Then they'd follow through with it.

- Sharp: Quite a while back, we talked about your being on the Jewish Community Relations Council. Was housing discrimination an important element of the council's work?
- Wollenberg: Not at the time I was active on it.
- Sharp: That came later, or--?
- Wollenberg: That came later. I was rather early. It was considered.
- I knew that housing discrimination actually existed, yes. Sure.
- Sharp: What were your general feelings about housing discrimination?
- Wollenberg: My general feeling was that if it was shown to exist, I didn't believe in it. I'm against discriminations of any kind, based on race, which is what we're talking about. Race, religion, sex.
- Sharp: As a Jewish person, are your thoughts about housing discrimination, or discrimination of other kinds, more--?
- Wollenberg: Some people would say so.
- Sharp: Do you have any special feelings about how you developed your thoughts about housing discrimination or other sorts of discrimination?
- Wollenberg: I think that if there's discrimination based on general prejudices, and so on, that's one thing. That's proper. It's against all the principles, even the expressed principles of the constitution.
- Sharp: I wondered a lot about your father's heavy involvement in social welfare of various types in San Francisco and around the state. I wondered how he might have influenced your ideas?
- Wollenberg: I can only remember one remark, which was made by Elizabeth Palmer when I made my order in this thing. She knew my father very well. In fact, she'd been his legal advisor for quite a few years when he was Social Welfare director of the state. She said, "Oh, my God, if your father were alive now. Albert, he'd throw you out!" She said, "He must be turning over in his grave with you signing this order."
- I said, "Elizabeth, cheer up. I'll take care of that part. That's not your business."
- Sharp: Why would he--?

Wollenberg: I don't know. She just thought that he would have felt--he would have been for reduction and saving the money and so forth along the lines, and had been battling big caseloads to handle them in other ways.

Sharp: He was looking at them more from an administrator's point of view, perhaps?

Wollenberg: Yes, sure, entirely. That was his job.

Summing Up: Contributions to the Northern District Court and Personal Philosophy

Sharp: I have some questions that are additional reflections about your district court work. They're pretty general. So we can just end with these, and then I think we'll be done.

Wollenberg: All right. Suppose we send out and get a sandwich or something. What would you like?

[lunch break]

Sharp: The first question is just to ask you what you think your particular contributions have been so far to the district court system?

Wollenberg: Well, I don't know that I've made any great or outstanding contribution of any kind, other than the fact that I have tried to discharge the duties of the court, to run a calendar and dispose of the cases, and to do so in accordance with the law. All I could have done, and I have done, I think, is decided matters that were left to me to decide as I saw them. That was it.

I think we've disposed of the court business that was assigned to me. I think it was done to the best of my abilities--I tried. I have taken part in administrative matters and activity in the court as a whole. I've taken part and had the opportunity to serve on the committees of the Judicial Conference and have worked on them. I feel that the work of the Probation Committee as a whole was a worthwhile activity. I think we did establish probation in the probation division to what it is today: the professional organization that I think is discharging its obligations in a very efficient and fine way.

Sharp: How do you think you've expressed your legal philosophy in your cases?

Wollenberg: I guess that what I have done, as I said a moment ago, is that I've decided matters as I've seen them. There could be inconsistencies in my philosophy if you try to analyze them. I think there always are. I have not tried to, in any way, compose those inconsistencies; that hasn't bothered me any. I think that my general philosophy has been to try to interpret the law and do it in a reasonable way so that individual people have not been hurt, and yet, at the same time, to protect the protections that are necessary for the maintenance of society as we know it.

Sharp: Do you have a sense of having had maybe a few really important cases as a district court judge?

Wollenberg: I think I've had some really important cases, yes. I think as much as any of them have. There's an occasional case, of course, that goes through the courts that has a lot more to it perhaps in the way of importance, depending on how you define that importance.

I think I've had my share of the cases, as they've come through the courts that have equally divided around. Some more sensational than others. Some are handled in a more sensational manner than others. That doesn't make them any less important.

Sharp: Does any one come to mind as being--any name of the case?

Wollenberg: Well, not particularly. I think that everything has some degree of real importance to it. I think when you're just deciding matters between individuals, it's very important to the people that are involved in it, in a lawsuit. It's just as important to them as it is to any group of people. And if it's important to them, they're members of some group or other, that must be important to the whole group. I think that all cases deserve the complete attention of the judge with the idea that they are just as important as anything else he'll ever be deciding.

I know you really have in mind cases that had a far-reaching result, and were of importance because of that. I think that they're there. I can't put my finger now on anybody in particular.

Sharp: Are you aware of how you have perceived yourself as a trial judge, that having changed maybe from the time you were a superior court judge up to now?

Wollenberg: How I conceive myself, has it changed? Oh, I think so. I think that when you start in this business, no matter what court it's in, as you go and get more experience and become more familiar with in many more situations as they arise and pass along as you go, that there is a change. There is a change.

Sharp: You mentioned that you thought you sentenced, perhaps, more heavily earlier.

Wollenberg: Yes, that's right. Earlier. That was one thing.

Sharp: The treatment of witnesses?

Wollenberg: Witnesses, jurors, attorneys. I think, though, you do learn to expect more from the lawyers. And, if you go along--

Sharp: Not to waste your time, or--?

Wollenberg: Not to waste your time and their time, and their client's money and effort and everything else. You appreciate more and more the efficient lawyer. The job is really an easy job, no matter what the case is. If the lawyers opposing each are good and able and competent lawyers, they move things quickly and they just take up the essentials, and they get down to what the issues really are, and do it quickly.

Sharp: In a number of cases that we've talked about, you've mentioned the role of the lawyer as being really central to what happens in the courtroom. Was there anything more you'd like to say about that?

Wollenberg: Only to this extent, I think that trial lawyers carry a terrific burden on themselves in connection with their clients to see that they don't do harm and injury to their clients' cases and causes through just their own inadvertence--not directly being vicious in any way at all, or anything of the kind.

There's no substitute for hard work and preparation. It's a very trite thing to say, but it is true. Preparation of a lawsuit, almost like anything else, but particularly in the question of a lawsuit. That not only means complete preparation as to the law, but also as to the facts--what the witnesses are going to say and everything else, and knowing the case completely. That's what it takes for the presentation of a good lawsuit.

Sharp: We've talked some about Judge Charles Wyzanski's writings. You said that you agreed with him, that a judge could be the spokesman for a community's values. I wanted to ask you what values you thought were most important, that should come through the judge. You talked about one, but not the other, not exactly what those values should be.

Wollenberg: Well, when we're talking about community values, we're talking about the reflection of the judge and the judge's actions as reflected in his actions by the community in which he lived

- Wollenberg: and the standards under which they operate now. Of course, those values must be of the highest nature. A great matter of integrity, and complete honesty and integrity lead to complete fairness. I don't think there's any substitute for it.
- Sharp: You see that a lot in the welfare rights cases and the housing discrimination?
- Wollenberg: In the welfare rights cases, I think of perhaps some question you asked previously, and I didn't answer it directly at the time--the politics of the situation come into the case. I think that perhaps in those cases, at that particular moment, reform probably is completely necessary. It should come about somehow. But not as a trade-off and compromise, which apparently it was agreed that some of those situations had arisen just through trade-off from a Democratic legislature and a Republican governor. You can't expect, therefore, to have anything else but just that--a trade-off somewhere along the line. In their desire to trade-off, they really accomplished nothing.
- Sharp: But that's not at all what is supposed to happen in the courtroom.
- Wollenberg: Oh, no. Not at all. It's not a trade-off in the courtroom; a decision should be a decision as to who's right and who's wrong.
- Sharp: I asked you once, two interviews ago, about accountability. As a district court judge, because it is not a collegial court most of the time, unless it's a three-judge court, that you act on your own. You are accountable, sort of, only to yourself. I wondered how that works, just in your own values?
- Wollenberg: Of course, I think that works well. I think it enables the judge who's working and must make his own decisions to make them on that basis, and not worry what someone else is going to do or say, or agree with him or disagree with him. When he decides it, that's the decision in the case at that level. He doesn't have to go looking for other people to come along and agree with him.
- Sharp: What are some of the common concerns of a senior district judge, the position that you have now.
- Wollenberg: I don't think that there is anything that's any different from the active judge from the position that you're in as a senior. You're doing less work, that is, you're having a lesser caseload. Therefore, presumably you're doing less work. I don't know that you do any less work, because when you're handling a case, and doing a matter, you're doing it thoroughly and completely. That's it. But, you don't have the volume and the pressure, therefore isn't as great. Your concerns are the same.

- Sharp: As a senior judge, do you begin to have a little more hindsight on your own home court? Do you think of advice that you would give, if they wanted it.
- Wollenberg: I suppose you do. It's natural that you do. You've certainly got more extensive experience.
- Sharp: How do you assess how your court, how the Northern District Court, has changed since you came on?
- Wollenberg: It always was a very busy court, a lot of work. But it, like all the other courts in the country, has changed. And as the city of San Francisco, and the Northern District of California, and all the environs around, particularly the Bay area, have changed, the court has changed accordingly.
- We have different problems. We were talking about housing cases here a while ago, and discrimination cases, and things of that kind. That's all relatively new to the courts. Employment, and so on. They're all relatively new. Therefore, the court has changed, because the work it's doing has changed.
- Sharp: I wondered what your understanding is of what an activist judge is. There are supposed to be judges who are activists, and judges who aren't.
- Wollenberg: Well, mine would be primarily that the judge doesn't wait for the legislature to change the law. He proceeds to change the law by judicial decree rather than waiting for the legislature to do it. There are some who do things of that kind.
- Sharp: You don't see yourself as an activist judge in that respect?
- Wollenberg: No. Where the law is a matter of legislation, a statute, I think it's the legislators' duty to enact the laws, and so on.
- Now, if you're talking about interpretation of law, and changing--no, I believe there that you feel something has been the law and is palpably wrong, that you can state your feelings in connection with it, what you feel the law is or should be. At least put the possibility of a change occurring. I don't feel that that is the same as undertaking to enact law and become a legislative body by creating new and different law.
- Sharp: Can you give me an example of a case where it explains your activist definition? Is there a classic federal case or another are?
- Wollenberg: A case that I have had?

Sharp: Not necessarily that you have had, no. One that you know of, and that would show a really activist judge in dealing with a specific law.

Wollenberg: Well, you had it to a large extent in some of the criminal interpretations of statutes which have never been used over many, many years for a particular purpose, and suddenly writing something into it that apparently was never there, nor considered to be there or anything else. That is, interpreting it as a new law.

An example might be, as to what definition of entrapment could be considered a defense in ABSCAM cases.* There are some discussions of it. To be entrapped you've had to always show that the individual had no propensity, indication of their particular acts. Things of that kind. Whether that's a good example or not, I'm not too sure.

Sharp: Are there other parts of what you would consider to be your own legal philosophy that you'd like to talk about?

Wollenberg: I don't think so. I think we've covered about everything. I don't think I have any real private, any legal philosophy that's different or outstanding or anything from others. I do think [this about] the job of trial judge: where the parties have come in to hear an understanding of what law is, and what they've been doing, and what it has been for a long time, I don't think you should suddenly change the rules of the game, and the case should be tried on the facts with attention to the law, applied to the true facts of the situation under its standard condition.

In other words, you don't change the rules of the game as you go along just to make it more exciting, or you start with something new and different just to be doing something different. People are entitled to rely on something as being a basis for their actions in the law.

[end tape 17, side 1; begin tape 17, side 2]

Sharp: That's about all the questions that I have. Do you have other things?

*ABSCAM is a term developed by the FBI to label its probe of official corruption. The term is derived from "Arab scam."

Wollenberg: No, I don't have anything that I want to say, I don't think. I think we've covered everything, and done it very well. Under the circumstances.

Sharp: When you get parts of the transcript, you may find you want to add certain things.

Wollenberg: Oh, yes. If I do, I'll make notes of it.

Sharp: That's real easy to do.

Wollenberg: If you have anything you want to check with me, or want to ask me something that occurs to you, some other question, don't hesitate to call.

Sharp: I'm sure I will once I start looking at the transcript. Thank you for your time.

Transcriber: Matt Schneider
Final Typist: Keiko Sugimoto.

Copy of 1945 testimony on AB800, as circulated to the press in April, 1952, by Keith McCormac, leader in the anti-Warren Werdel delegation.

EXCERPT FROM TESTIMONY OF DR. NATHAN SINAI, PRINCIPAL
WITNESS FOR GOVERNOR WARREN'S COMPULSORY HEALTH INSURANCE
PLAN, GIVEN BEFORE PUBLIC HEALTH COMMITTEE OF ASSEMBLY,
CALIFORNIA LEGISLATURE, MARCH 27, 1945.

ASSEMBLY, CALIFORNIA LEGISLATURE, 1945

THE CHAIRMAN: Thank you, Doctor. As long as I am Chairman there will not be any heckling here.

Do any of the members have any questions to ask of Dr. Sinai?

MR. SAM COLLINS: I asked Mr. Wollenberg to ask or inquire concerning your qualifications because I was anxious for these people here to know of them, and I am advised that you are a graduate of the schools here in California: Is that correct?

DR. SINAI: Quite.

MR. SAM COLLINS: Of what school are you a graduate?

DR. SINAI: The first school from which I took a degree,—you embarrass me by making me go back that far; it was thirty years ago, was in veterinary medicine in San Francisco. It was after that I went into Public Health. After that I went to the University of Michigan, with a certain interval when I went to New York University.

MR. SAM COLLINS: Now, you graduated in California with the Degree of Doctor of Veterinary Surgery?

DR. SINAI: Yes.

MR. SAM COLLINS: Q And with what degree did you graduate from these other schools of which you speak?

DR. SINAI: In 1923 or 1924 I took a Master's Degree in Public Health at the University of Michigan, and about three years later a doctor at Public Health at Michigan.

MR. SAM COLLINS: What is a Doctor at Public Health? Doesn't that have to do with sanitation and mosquito abatement and such things?

DR. SINAI: Yes, much to do with sanitation and mosquito abatement, but as with all degrees there are specializations the same as one might be a general practitioner or a surgeon; and for the past seventeen years my specialization has been in medical economics.

MR. SAM COLLINS: When did you get a degree in medicine?

DR. SINAI: I didn't.

MR. SAM COLLINS: Then you are not a doctor in medicine?

DR. SINAI: No.

MR. SAM COLLINS: You never practice medicine?

DR. SINAI: No.

MR. SAM COLLINS: And you are now a teacher at Michigan?

DR. SINAI: Public Health and Administration is the general; Public Health and Economics the special.

MR. SAM COLLINS: Q Did you ever appear before the Legislature in Michigan advocating any public health insurance?

DR. SINAI: The Legislature in Michigan has never, as far as I know, faced the problem.

MR. SAM COLLINS: They haven't the problem in Michigan?

DR. SINAI: That is the Legislature.

MR. SAM COLLINS: Do they have compulsory health insurance?

DR. SINAI: No.

MR. SAM COLLINS: Have you ever appeared before them?

DR. SINAI: No.

MR. SAM COLLINS: Have you ever advocated it elsewhere than before the Legislature here in California?

DR. SINAI: Why certainly.

MR. SAM COLLINS: Where?

DR. SINAI: I would never say no to that because that would immediately qualify me as something other than an expert.

MR. FIELD: Are you an expert?

DR. SINAI: Yes, and the way I prove it is by, among others, agreeing to such things.

MR. EVANS: Mr. Chairman, I wonder if Dr. Sinai would yield on a couple of questions? Doctor, you stated that you left Michigan when to come out here on this bill: To speak on behalf of this bill or any of the bills before the Legislature?

DR. SINAI: About a week ago.

MR. EVANS: And who approached you to come out here and speak on behalf of these bills or any of the bills under consideration?

DR. SINAI: Well the invitation came from the Governor.

MR. EVANS: How many people came out with you? Did you come out by yourself?

DR. SINAI: No, my wife. One never goes to California alone.

MR. EVANS: Now, at the time they approached you did they say they would pay your expenses to California?

DR. SINAI: They did.

MR. EVANS: Who did?

DR. SINAI: Well, the original discussion of coming to California came up through and with a friend of mine out here, Ernest Sloane, Dean of the College of Dentistry in the College of Physicians and Surgeons in San Francisco. He was back East one or two months ago and we were attending a committee meeting, the same committee where I was consultant, and he said, "We are going to face the same problem in California relative to health insurance. Would be possible for you to come out?"

MR. EVANS: At the request of the Governor?

DR. SINAI: Yes, he said it would be at the request of the State at that time.

MR. EVANS: Now, let me ask you, Doctor, you were in private practice at some time, were you not?

DR. SINAI: No, I don't have a medical degree.

K M FILES

THE CHAIRMAN: Just a moment, please: Mr. Sweigert has been in consultation with the Governor and has a statement to make. You may proceed, Mr. Sweigert.

MR. SWEIGERT: I telephoned the Governor and told him of the questions that have been asked and he told me I was authorized to speak for him and to say that, of course, none of the expenses of Dr. Sinai would be paid out of any fund appropriated for the Governor's Office by the Legislature, including the so-called investigation fund.

MR. EVANS: Who is paying the money?

MR. SWEIGERT: I can only tell you what I know about it. I talked with the Governor some time ago and he expressed a desire to bring to the Legislative Committee a person who acquired experience in the field of public health. He made a number of inquiries and invariably concluded that Dr. Sinai of the University of Michigan was recognized as an outstanding authority in this field, having not only theoretical experience but practical experience in the tremendous studies that have been made by the Committee on the cost of medical care in 1932.

"That is the man we want," so he sent out some word and out whether or not Dr. Sinai could be prevailed upon to leave his work while his work at the University of Michigan and take time out to here and check the proposal that was being made in Assembly Bill and word came back that Dr. Sinai would do that, and in that connection the only inquiry was whether or not his expenses would be paid. The Governor assured him that his expenses were going to be paid. I thereafter asked the Governor how the expenses were going to be paid. He said he didn't know but if necessary, I would pay them myself," and I added, "If necessary we will cover them."

MR. EVANS: In other words we still don't know who paid the expenses of this gentleman to come out here. Now, you know a man from the University of Michigan who is on your staff named Mr. Dowell?

DR. SINAI: He is a member of my own staff.

MR. EVANS: Of course you are aware of the fact that he is in California?

DR. SINAI: I sent him here.

MR. EVANS: Who paid his expenses? Am I going to get the same merry-go-round with that deal?

DR. SINAI: No, we can be very precise on that. I enter a timid question: I am wondering what difference this makes to my testimony?

MR. EVANS: It makes this: I have been around this place and we have appropriated large amounts of money, and I know it is quite ample. It is quite ample, to give their opinion regarding medicine, both legislation in connection therewith and the practice thereof. We have appropriated large amounts of money, and I might state to you that a couple of years ago this is not something new—they introduced a bill here to bring a gentleman from

Read the story about the
CAT, DOG or HORSE DOCTOR
Gov. WARREN brought to
California to advise the
LEGISLATURE about his
HEALTH INSURANCE PLAN

Respected Jurist

U.S. Judge Wollenberg Dies

U.S. District Judge Albert C. Wollenberg Sr., a soft-spoken jurist highly regarded both by his peers and the lawyers who argued cases in his courtroom, died yesterday at Mt. Zion Hospital. He was 81.

When Judge Wollenberg was appointed to the federal bench in 1958 by President Eisenhower, he had already served as a San Francisco Superior Court judge and an assistant U. S. attorney, and had made his mark in politics in the state Assembly as the author of an anti-loan shark measure and as chairman of the Ways and Means committee.

Politically, he was a Republican and a supporter of then-Governor Earl Warren, serving as floor manager of several of Warren's key proposals.

Warren appointed him to the Superior Court bench in 1947.

At the time of his induction, Judge Wollenberg was heralded by state Supreme Court Chief Justice Phil S. Gibson as "able, fearless, courageous and industrious."

Twenty-nine years later, a Judicial Evaluation Survey by the San Francisco Bar Association gave Judge Wollenberg an "excellent" rating in legal skills, judicial temperament and impartiality.

During his tenure on the federal bench, Judge Wollenberg ruled on a number of controversial cases.

In 1971, for example, he ruled that poor people have the right to be candidates for city office with-



ALBERT WOLLENBERG SR.
Civic and judicial leader

out paying a filing fee. The same year, he went against counter-culture currents, ruling that a commune, no matter the extent of its familial spirit, is not a family. The ruling struck a blow against communes setting up in areas zoned for residential, single-family use.

In another decision, he held that attorneys must be allowed to inspect San Quentin Prison on a regular basis to ensure inmates were not mistreated.

The son of the late Charles M. Wollenberg, one-time state social welfare director, Judge Wollenberg

was a native San Franciscan. He attended Lowell High School and was a member of the class of 1922 at the University of California at Berkeley. He received his law degree from Boalt Hall two years later and began a law practice in the city in 1925.

He served as assistant U.S. attorney from 1928 to 1933.

Judge Wollenberg was also a leader in civic and community affairs, and served three consecutive terms as president of the congregation of Temple Emanu-El. He was also a member of the state Judicial Council and the Marina Post of the American Legion.

In 1976, he officially retired as a judge, but continued his work on the bench in a semi-retired position until about six months ago, when illness curtailed his work.

Judge Wollenberg is survived by his wife, Velma; a son, Municipal Court Judge Albert C. Wollenberg Jr.; a daughter, Jean Wollenberg Waldman; a brother, Harold Wollenberg, and six grandchildren.

Funeral services are scheduled for noon tomorrow (Tuesday) in Temple Emanu-El, Arguello Boulevard at Lake Street. Sinai Memorial Chapel is in charge of arrangements.

The family prefers contributions to the Ernest Rosenbaum Cancer Research Fund at Mt. Zion Hospital or the San Francisco Hearing and Speech Center at Temple Emanu-El.

San Francisco Chronicle, April 20, 1981

OBITUARY

Judge Albert C. Wollenberg

From Tribune and wire reports

SAN FRANCISCO — U.S. District Senior Judge Albert C. Wollenberg Sr., a former state assemblyman and assistant U.S. attorney, died over the weekend after an extended illness at the age of 81.

A political and judicial protege of former California Gov. Earl Warren, Wollenberg was appointed to the federal bench in 1958 by President Eisenhower and officially retired in 1976. But he continued to dispense justice in the reduced capacity of senior judge until his health failed six months ago.

Among his federal court rulings was one in 1971 that said poor people did not have to pay filing fees to be candidates for city office, and another the same year that halted former Gov. Ronald Reagan's plan to reduce welfare payments without explaining the cuts specifically to individual recipients.

Wollenberg also held that lawyers must be allowed to inspect San Quentin Prison regularly to ensure that inmate clients were not being mistreated.

Before Warren appointed him to the San Francisco Superior Court bench in 1947, Wollenberg spent nine years in the Assembly, making his mark as chairman of the Assembly Ways and Means Committee and as the author of a measure against loan-sharking.

In its 1976 Judicial Evaluation Survey, the San Francisco Bar Association gave Wollenberg an "excellent" rating in legal skills, judicial temperament and impartiality.

The son of former state welfare director Charles M. Wollenberg, Wollenberg graduated from the University of California at Berkeley in 1922.

He served as an assistant U.S. attorney for the Northern District of California from 1928 until 1934.

Wollenberg was both a civic and a community leader in his native San Francisco, serving three consecutive terms as president of Temple Emanu-El. He was president of the San Francisco State College board of directors during the 1950s and was a member of the California Judicial Council and the Marina Post of the American Legion.

Survivors include his wife, Velma; a son, Municipal Court Judge Albert C. Wollenberg Jr.; a daughter, Jean Waldman, and a brother, Harold.

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Interviewer, Regional Oral History Office, 1959--; conducted interview series on University history, woman suffrage, the history of conservation and forestry, public administration and politics. Director, Earl Warren Era Oral History Project, documenting governmental/political history of California 1925-1953; director, Goodwin Knight-Edmund G. Brown Era Project.

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